

CLERK'S COPY.

Vol. III
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1942~~ 1943

No. 497

3

A. M. ANDERSON, RECEIVER OF NATIONAL BANK
OF KENTUCKY, OF LOUISVILLE, PETITIONER,

vs.

KATHERINE KIRKPATRICK ABBOTT, ADMINIS-
TRATRIX WITH THE WILL ANNEXED OF THE
ESTATE OF DAVID J. ABBOTT, DECEASED,
ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 28, 1942.

CERTIORARI GRANTED DECEMBER 7, 1942.

IN THE
Supreme Court of the United States

October Term, 1942

No. 497

A. M. ANDERSON, Receiver of the National Bank of
Kentucky,

v.

Petitioner,

KATHERINE KIRKPATRICK ABBOTT, Administra-
trix of the Estate of David J. Abbott, deceased, et al.,
Respondents.

Transcript of Record

On Petition for Writ of Certiorari to the United States
Circuit Court of Appeals for the Sixth Circuit

VOLUME III

ROBERT S. MARX,
FRANK E. WOOD,
NICHOLS, WOOD, MARX & GINTER,
Cincinnati, Ohio,

ALFRED C. KRIEGER,
Louisville, Ky.,

Attorneys for Petitioner.

LAFON ALLEN,
W. W. CRAWFORD,
ALLEN P. DODD,
Louisville, Ky.,

Attorneys for Respondents.

Volume III

TABLE OF CONTENTS

	PAGE
Defendants Evidence (continued)	
Robert F. Vaughan	1
Charles A. Schuck	36
J. K. Helm	44
J. W. Commack	117
A. J. Carroll	137
William S. Speed	177
C. C. Hieatt	193
Stanley P. McGee	218
Walter Girdler	219
George O. Boomer	228
Horace A. Taylor	247
E. Leland Taylor	259
Frederic M. Sackett (Affidavit)	282
Stipulation as to Testimony	290
E. J. O'Brien, E. Weinstock, Sam H. Stone, Ben Metcalfe, Augereau Gray, Walter I. Kohn	
Plaintiff's Evidence	
J. C. Daniels	293
Hugh A. White	296

**PROCEEDINGS IN THE U. S. CIRCUIT COURT
OF APPEALS—SIXTH CIRCUIT**

VOLUME III

	PAGE
Entry—Cause argued and submitted	311
Judgment	311
Opinion	312
Petition for rehearing	327
Order denying petition for rehearing	355
Order for transmission of exhibits	355
Clerk's certificate	355
Order extending time within which to apply for a writ of certiorari	357
Order allowing certiorari	357

District Court of the United States

A. M. ANDERSON, Receiver of the National Bank of
Kentucky,

Appellant,

v.

KATHERINE KIRKPATRICK ABBOTT, Administra-
trix of the Estate of David J. Abbott, deceased, et al.,

Appellees.

Robert F. Vaughan,

called for defendants, examined by Mr. Crawford, testified:

My name is Robert F. Vaughan. I am a lawyer and live in Louisville. I was connected with the Louisville National Bank and Trust Company as director at the time it merged with the Louisville Trust Company. The proposal had been made by Mr. James B. Brown, President of the National Bank of Kentucky to Mr. Bean, President of the Louisville National Bank and Trust Company, that the two banks, that is, the Louisville Trust Company and the Louisville National Bank and Trust Company merge. That matter was brought to our board by Mr. Bean, with his recommendation, and consolidation after certain mechanics, denationalizing, etc., was affected.

The purpose of making that trade was that we felt it was very advantageous to our stockholders. Mr. Bean had gone into the Louisville National Bank and Trust Company as a rather young man, as a representative of the Ballard family which controlled the bank. He had built the bank up in the '20's to a point where he felt he could not carry

Robert F. Vaughan—Direct

it any further. He felt he had reached his peak and he believed that this merger with the Louisville Trust Company and the Trust Agreement with the National Bank of Kentucky would be advantageous for his stockholders, for the bank and for all concerned. That is the only reason that I know of for the trade.

At that time the National Bank of Kentucky was regarded by us as the leading national bank in this part of the world. The Louisville Trust Company was regarded as the second largest and oldest trust company in Louisville. The basis of the trade was that we traded share for share with the Louisville Trust Company. We got Trustees' Participation Certificates.

Copy of the agreement covering the merger of the Louisville Trust Company and the Louisville National Bank and Trust Company ordered filed as part of Mr. Vaughan's testimony.

After the consolidation had been effected I became a director of the Trust Company. It was along in May, 1929. After that trade the question came up of the formation of Banco Kentucky Company. I had participated in those conferences.

In answering the question regarding the intention of the organizers of Banco as to the character of the company that should be organized, I would like to give something of the background of the banking situation to make myself clear. I can only testify as to what went on in the preliminary meetings that were held leading up to the organization of Banco. The banking situation as developed in these discussions, had changed materially, due to the development of security markets and the booming of security markets in this country, and the financing of the larger corporations by selling their securities rather than by commercial loans in banks. The net result of that was that the net

Robert F. Vaughan—Direct

amount of security in banks for rediscount in the Federal Reserve was growing smaller and smaller. The banks had to borrow money, to buy securities for financing these companies, and we felt that the banks were being used by the investment bankers to bring out these securities. As Mr. Brown frequently said, "They are getting the cream and we are getting the skimmed milk."

The idea of organizing Banco was to engage in the underwriting, buying and selling of securities, and also to serve as a reserve or back-log for a number of banks. The means by which that should be done was the acquisition of a large number of commercial banks. Those ideas were finally discussed at the meetings leading up to formation of Banco.

It was decided to form a corporation known as the Banco-Kentucky Company. A. J. Carroll prepared the articles of incorporation. There was no discussion in the Board in any meeting I ever attended as to just what should be put into the articles of incorporation. That was left to Mr. Carroll, except as to the amount of capital and the business and purpose of the corporation. The detail as to the form was left to him.

My recollection is, of course, this has been a long time ago, that Mr. Carroll read those articles to a meeting. I won't say it was a meeting of the Board of Directors, because there were meetings of groups of the Board, but he read the articles at one time and he was instructed to prepare and file them at Dover, Del. As far as the people that went into the trade were concerned, there were copies of it lodged in both banks, the Louisville Trust Company and the National Bank of Kentucky, for inspection by any shareholders who wanted to see them.

With reference to clause 8 in the article "That the private property of the stockholders shall not be subject to

Robert F. Vaughan—Direct

the payment of the corporate debts to any extent," there was no specific direction to put it in the articles and no discussion of it whatever. When Mr. Carroll read the articles to the incorporators there was no discussion of that clause. It was regarded as a formal clause, the usual thing in corporate charters.

Along about the first week in July the question came to me as to tax matters involved in the exchange of Trustee Certificates for Banco. After one of the meetings of the Bank of Kentucky, I think it was on Friday, Mr. Brown, as I recall it, beckoned me to the chair after the members had scattered and asked me if I had an opinion with reference to whether or not there would be any income tax levied by the Federal government upon the exchange of two shares of Banco for one Trustee Participation share, and I gave it as my opinion that unless a majority of the stock was exchanged, and unless further very careful regard was paid to the provisions of the Federal Income Tax Law with reference to that situation, there would be.

He asked me to write him a letter, which I did, as I recall, on the next day, and in which I cited the provisions of the Revenue Act of 1928 or 1927 calling his attention to the way I thought the tax might be avoided on the difference or gain between the cost of Trustees' Participation Certificates and the fair market value of whatever he got in exchange. The first letter I wrote him, July 6, 1929, is Plaintiff's Exhibit 25.

The witness then read the letter interposing that the prospectus, as he recalled it, as originally drawn, was read at the meeting of July 5th. The prospectus was the letter of July 19 as amended by what is suggested in this letter of July 6th.

At the time I wrote this opinion the prospectus which was proposed to be used in writing the Trustee Participa-

Robert F. Vaughan—Direct

tion stockholders had been read to us. It did not contain any statement about a "reorganization." It did not say anything about the necessity of securing a majority of Trustees' Participation Certificates. I was then requested by the Trustees to secure a ruling through Miller and Chevalier, who had offices in Washington. I asked Mr. Robert N. Miller of that firm, an old Louisville boy who had been Solicitor of Internal Revenue under the Wilson administration, to get that ruling. He got it. I think the report was sent to Mr. Brown or the Trustees, enclosing the ruling of the Department. Plaintiff's exhibit 134-1 is the ruling by the Department that the Trustees would be regarded as an association or corporation.

With respect to our proposed prospectus, I then wrote another letter to Mr. Brown. My recollection is that this is the letter Judge Marx was referring to a minute ago, in which there was an enclosure. I wrote him another letter on July 9th, supplementing the letter of July 6th. The letter of July 9th (Plf's Ex. 25-5) addressed to Mr. James B. Brown was then read into the record.

With that letter I enclosed this suggested preface to the prospectus which is Plaintiff's Exhibit 25-1. "The suggested preface to the prospectus," addressed to the holders of Trustees' Participation shares, was then read into the record. The prospectus was changed after my letter. I don't know whether it was re-read to the Directors or not. It was sent out that way to the Trustee Participation Certificate holders.

At the time that letter was sent out there was no change made in the organization of the National Bank of Kentucky or the Louisville Trust Company. Neither the National Bank of Kentucky nor the Louisville Trust Company was, as a corporate entity, a party to any reorganization at that time.

Robert F. Vaughan—Direct

At that time the National Bank of Kentucky did not enter into any agreement with the BancoKentucky Company or with the Trustees in any way affecting its corporate status, that I know of. Neither did the Louisville Trust Company. Their business continued to function after Banco was formed exactly as before.

The parties to the reorganization plan referred to in the letter sent out to the stockholders, the Trustees' Participation holders, were the Trustees on the one part and the BancoKentucky Company on the other.

60. Were they the parties that caused you to use the terms "reorganization" in that letter to come within the tax statute?

All I can say is this, that the Trustees for these two banks under that agreement referred to, employed Miller and Chevalier, my associates at Washington, to get a ruling that they were an association or corporation within the definition or meaning of that revenue act, and they got the ruling.

That related to the income tax of individual owners or holders of Trustees' Participation Certificates. The shares of the National Bank of Kentucky and the Louisville Trust Company were not to be dealt with in the organization of this separate corporation.

I became a director of BancoKentucky Company. It was my intention and the intention of the board as revealed by discussions in the board to carry out the charter powers of Banco.

Q. 71. Did anything interfere with the full completion of that in the early stages of Banco?

A. Well, I think the market conditions did in the fall of 1929.

From my experience in the banking field, so far as I know, there were no issues being floated around Louisville

Robert F. Vaughan—Direct

between the time of the depression and the early part of 1930. There had been prior to that time.

By a rather curious coincidence on the day Hoover came here to visit us and went across the bridge the stock market was sinking. The bridge had been built from revenue bonds which had been floated a year and a half before. So far as I know that was the last issue; except one that Mr. Brown got extended—he got the Louisville Railway bonds extended in 1930—but that was not the floating of a new issue, merely the extension of an old one. That issue was about six or seven million dollars. Louisville was not big enough to take the Bridge Bonds. Stranahan, Harris and Otis of Toledo took it. That particular issue was referred to by Mr. Brown in the meetings when Banco was being discussed as an example of how the banks were getting the skimmed milk and the investment bankers the cream. Here was an issue taken right out of the lap of Louisville with no one here to handle it.

There was no discussion between the organizers of Banco Kentucky Company in my presence at any time as to the desirability of forming that Company in order that Trustees' Participation Certificates might be transferred to it and thus avoid or evade any liability they might have as stockholders of the Louisville Trust Company or the National Bank of Kentucky. I never heard anyone mention it, first or last, in the whole organization. I never had any questions at the time Banco was formed or through October, 1930, as to the solvency of the Louisville Trust Company or the National Bank of Kentucky. The question of relieving the Trustees' Participation Certificate holders from double liability never came up in any meeting or any discussion that I heard.

I was employed by Mr. Brown, through Charley Jones, to do the job of denationalizing the National Bank of Ken-

Robert F. Vaughañ—Direct

tucky; I drew the papers and prepared all the details which should have been gone through with for the consummation of that plan.

The reason for denationalizing goes back to the original program of Mr. Brown, if I may be permitted to state, your Honor, and that was, his ultimate plan was, to acquire a group of banks. His idea, if I may state it, was not chain banking or branch banking, but group banking, which is an entirely different thing. Group banking is owning, managing and controlling any bank under its own directors and officers—not a chain. His idea was to buy a group of banks in the Ohio and Mississippi Valleys, and his ultimate objective, as he explained to me many times, was to carry the reserves of this group in a central city like Chicago, and not through the Federal Reserve.

I never heard any discussion of the bad condition of the National Bank of Kentucky as the possible reason for denationalizing it. There was no discussion of the fact that the Louisville Trust Company might be in trouble as a cause for denationalizing the National Bank of Kentucky. There was no discussion at any time which I participated in or heard that the condition of either the Trust Company or the Bank made the formation of Banco Kentucky Company desirable or necessary. I am going to make this statement in connection with that, that on the contrary, Mr. Brown's idea was that a large organization like Banco would be able to aid all the banks that were acquired in this group banking program. That was one of the purposes of it. In other words, it was a mutual proposition.

Economizing was not the prime purpose of denationalizing the Bank of Kentucky, as I understood it. At one time we had discussion about housing the banks in the same building, probably eliminating some of the overhead.

It was desirable to get out of the Federal Reserve system because there were so few discountable or rediscountable

Robert F. Vaughan—Direct

items in the banks, as I explained a minute ago. The National Bank of Kentucky had to carry reserve in the Federal Reserve, and Mr. Brown's idea was that that was wasted money, that he could carry our reserve in Chicago. That was the cap, then, in our own institution. In other words, the loans in the bank, mostly, were collateral loans that could not be rediscounted, and the utility of the Federal Reserve to his bank was questioned by him.

Reference has been made to a letter written by Mr. Stewart of the Federal Reserve to Mr. Jones with a list of what was termed substandard assets attached. I never saw that. I saw the copy of the letter sent to Mr. Jones but I did not see the copy of the list of substandard assets. Plaintiff's Exhibit 54 is a copy of a letter. There was not a list of so-called substandard assets with the copy I received. After I got a copy of that letter I talked to Mr. Jones, the Cashier of the Bank of Kentucky, about it. He said there was nothing but the usual criticism that bank examiners make of a bank. I never saw the Exhibit. I never took that up at any time with any member of the board. I wasn't a director of the Bank of Kentucky. I took it up with Mr. Jones, the cashier. I did not take it up with the board of directors of the Louisville Trust Company. I didn't pay any attention to it after what he told me.

During the formation of Banco Kentucky Company and prior to the actual transfer of Participating Trustees' Certificates I did not know that the Bank or Trust Company were in any financial trouble. I never had any discussion that there might be any double liability. None that I ever heard of. I never heard any discussion that the formation of Banco was got up to avoid double liability. After Banco was formed I purchased stock in it. I have forgotten when. I think I bought 500 shares, but I am not sure.

Robert F. Vaughan—Cross

Robert F. Vaughan,

cross-examined by Mr. Marx, testified as follows:

I was originally on the Board of Directors of the Louisville National Bank. As a director and an attorney I was familiar with the National Banking Laws of the United States in a general way and had had experience in those laws. I knew generally what the provisions of the United States Code with reference to national banks were.

The capital of the Louisville National Bank & Trust Company was \$750,000, represented by 7,500 shares of the par value of \$100 each. When that bank was a separate institution, it built a new bank building at 421 West Market Street, which was completed prior to the merger or consolidation with the Louisville Trust Company. I don't remember when the Louisville National Bank moved into the new building. It probably was May 24, 1929. My recollection is that the Louisville National Bank occupied the building before the consolidation or at least before the Louisville Trust Company moved over from the old building.

We had built the building and paid for it before the consolidation. I can't recall the approximate cost of that building but \$857,000 more or less sounds about right. It was sold to the Lincoln afterwards for about half, and my recollection is that the Lincoln bought it for about \$400,000. I would not regard the Louisville National Bank & Trust Company's investment in that bank building as frozen. It was not a liquid asset but it was probably necessary to the conduct of business.

They had more than the bank's capital invested in the building. They did not have more than the capital and surplus and undivided profits, as I recall it. At the time of the merger Mr. Bean had gone as far as he could go with that bank in the way of getting new business.

Robert F. Vaughan—Cross

As a result of that merger the Louisville Trust Company owned the building at Fifth and Market, the old Louisville Trust Building, and they owned 420 West Market. The National Bank of Kentucky was located in rented quarters at Fifth and Main Streets. The Louisville Trust Company did not need more than one building. When the merger took place and the Louisville Trust Company moved to 421 West Market, that left the Louisville Trust Building at the corner of Fifth and Market, the bank's offices, vacant.

I don't know what the Trust Company had invested in the Fifth and Market Building. I say this, at the time of that consolidation it was contemplated that the Bank of Kentucky would occupy one or the other. It occupied some of the safety deposit boxes at 421 West Market before they closed.

I don't recall how long the Louisville Trust Company banking quarters stood vacant. The building was remodeled with the idea that the Louisville Trust Company would move back from 421 to Fifth and Market, which it subsequently did.

I don't know the time when Caldwell's trouble became rumored about. I remember testifying in a law suit between Mr. Anderson and the Trust Company having to do with 421 West Market Street. A newspaper article in the Louisville papers with reference to some troubles with Caldwell & Company about the middle of October, 1930, was the first news that I had of any trouble with Caldwell. I can't recall when that news story appeared but I know that it was in the fall of 1930. I don't recall when the Louisville Trust Company moved back to the Louisville Trust Building. When they moved back that left 421 West Market Street, the banking offices, vacant. Substantially all there was at 421 West Market Street was the banking offices and the fourth floor which was rented to the Board of Trades. It was substantially a one purpose building.

Robert F. Vaughan—Cross

The time the Louisville Trust Company moved to 421 was just about the time the Caldwell & Company trouble became public. I don't know the date but I think it was approximately about that time.

I remember going to Nashville in connection with Caldwell's trouble on election night November, 1930. I found those troubles were quite real. I was in touch with Mr. Brown on the telephone all the time that I was down there. Among other things I suggested to him that it had a bad effect on the public to have this vacant bank building here. That it would excite public comment. I told him we ought to announce that we were going to move into that building in the paper—he owned the Herald-Post. He did announce it but he never moved anything but some valuables of customers into that building.

151—So to speak, that was really the last, desperate gesture to stop the impending catastrophe?

A.—It was desperate at that time unquestionably.

The Louisville National Bank & Trust Company was unified with a wholly owned subsidiary or affiliate. That was the Louisville National Company, affiliated with the Bank through a trust agreement. The Bank declared a dividend and the stockholders agreed to apply that to creating the capital of the Louisville National Company, which was unified with the Bank, and the dividend upon the bank stock carried with it the return upon whatever earnings the Louisville National Company made.

The Louisville National Company was a corporation formed and operated on the same theory as the National City Company. That was the precedent, I think, for that type of affiliate. It was organized to sell collateral trust bonds and buy securities. It was organized by the Louisville National Bank & Trust Company and owned by the stockholders of the Louisville National Bank & Trust Com-

Robert F. Vaughan—Cross

any, through that trust. In other words, the stock certificates stated that the stock ownership in the Louisville National Bank & Trust Company carried with it ownership in the Louisville National Company. That made the shares of the stock indivisible with those of the bank itself.

When the merger occurred between the Louisville National and the Louisville Trust Company, I was a stockholder of Louisville National owning, I think, 25 shares. I think the first stock I bought cost around \$175.00 a share, and I think the second lot cost more than that. I don't recall accurately. I know at the time we consolidated the Louisville National Bank stock was selling around \$175.00 to \$200.00. I think my stock cost me, on the average, \$150.00 to \$175.00.

In exchange for my Louisville National Bank and Trust Company stock I received 10 shares of Louisville Trust Company stock, that I had to have to qualify as a director, and the difference in Trustees' Participation Certificates, as I recall.

I think I received 25 shares of Trustees' Certificates having the par-value of \$100.00, and that I then deposited ten Trustees' Certificates with the trustees and they issued 10 shares of Louisville Trust Company stock to qualify me as a director, and then I deposited that stock with the Trustees. Unquestionably, Trustees' Participation Certificates were issued to stockholders of the Louisville National Bank and Trust Company because there was no Louisville Trust Company stock out. It was all in Trustees' Participation Certificates, but whether I did that or not, I don't know; they may have just cut it short and issued the Trust Company stock to me directly. I never had physical possession of the director's qualifying shares. It was all held by the Trustees. That is the reason I didn't think I ever got it; they kept it over there under the trust receipts. Except

Robert F. Vaughan—Cross

as to men who were directors in the Louisville National, its stockholders received only Trustees' Certificates.

At that time the Trustees' Certificates were \$100.00, I think, but they were very quickly changed to \$10.00 par, around that time the change was made.

A man who owned \$100.00 of stock of the Louisville National received \$100.00 of Trustees' Certificates which were exchanged, ten for one, into \$10.00 Trustees' Certificates. And that was subsequently changed to twice as many shares of Banco, at \$25.00 a share. When I exchanged my stock for Banco I got \$500.00 in Banco stock. That is approximately correct, I suppose.

In the letters to which Mr. Crawford directed my attention, in which I spoke of taxable gain, the taxable gain would be the difference between \$175.00 and \$500.00, or \$325.00 per share. If it was an outright sale I would have had to pay income tax. The statute provided that in exchanges of property for other property, a gain would be realized represented by the difference between the cost of the original property and the price of the property exchanged. If a man was a purchaser at or about par of the National Bank of Kentucky and there subsequently was a 60% stock dividend which he got, he would be the owner of \$160.00 par. When he exchanged his stock he would get \$160.00 par of Trustees' Certificates. That was split ten for one and would give him 16 Trust Certificates at \$10.00 each. If he traded them in for Banco at two for one, he would get 32 shares of BancoKentucky at \$25.00 a share, equal to \$800.00. The taxable gain on that transaction, assuming the acquisition of National Bank stock at a cost of par or \$100.00, would be \$700.00. If it was an outright sale or exchange of property, he would have to pay tax on \$700.00 for each share that he transferred to the BancoKentucky Company.

189—And it was your opinion that it was not an outright exchange or sale, wasn't it?

Robert F. Vaughan—Cross

A.—Well, it was my opinion that if the Trustees complied with the section of the Revenue Act that they acquire a majority of the Trustees' Participation Shares, pursuant to—the technical language of the Act—the plan of reorganization, that there would be no taxable gain until the stock was sold; I mean, there wouldn't be any on the exchange.

190—Because it was a reorganization and not a sale or outright sale?

A.—A reorganization within the meaning of the act.

It was my opinion that they ought to comply with the provisions of the Act. No taxable gain was realized by those who were original Trustees' shareholders and exchanged their stock for BancoKentucky Company stock. I think I recall in that connection that the Revenue Agent in charge ruled that way in regard to one of your fellow townsmen up in Cincinnati, Mr. Gustave Mosler. He was President of the Brighton Bank and Trust Company, one of the banks acquired by the BancoKentucky Company in September 1929.

In my letter of July 9, 1929 I said that the transaction, if carried out in the manner recommended by me, would be a mere receipt of the same property in another form and not a closed transaction, wherein they part with one species of property in exchange for an entirely different species of property, and it was done that way. What I was stating there was the philosophy of that law, in which the exchange is characterized, from the tax standpoint on the theory—while it is literally not true, if you acquire the majority of the stock, that is the same property, it is the theory of the statute that it is the same property.

197—In other words, the theory of the law is that the stockholders of these corporations had reorganized in that they had taken shares of stock in a holding corporation of which they owned a majority, in exchange for the certifi-

Robert F. Vaughan—Cross

cates that they formerly held in the trust estate, of which the holding company owned a majority?

A.—That was the fact of the transaction.

As far as the Trustees themselves were concerned, there was no change in their setup that I know of. They had to continue to function under the Agreement of April 22, 1927 just as they had before in order to make this statutory reorganization effective. We had them declared to be a corporation or association within the meaning of the act. The Trustees continued to own the stock of the Bank, and to vote the stock of the Bank just as they had before. The only difference was that the stockholder in the trusteeship now owned stock in the BancoKentucky Company instead of the stock in the trusteeship. I don't agree that it was a holding company.

After the reorganization BancoKentucky Company held the same paper that the Trustees' Certificate holder had held before the reorganization. They acquired the majority of those shares, an overwhelming majority of them accepted the plan. No money changed hands in that at all. It was just an exchange of one kind of paper for another kind of paper.

The Board of Directors, of course, of the BancoKentucky Company, was in control of it. Under the Trust Agreement, as I recall it, the Trustees were under the control of the two institutions, subject to certain rights of an Advisory Committee and a certain number of receiptholders—I don't recall the terms of the trust.

Under the terms of the letter that went out, the circular, we stated that the officers and directors would be the same, as I recall it. The plan called for a majority of the BancoKentucky stock to be acquired by the Trustees' Certificate holders. A majority of the Banco stock gave legal control, and vice versa. I checked that double that way because I

Robert F. Vaughan—Cross

didn't know what they were going to do about these Trustees as an association. Actually, by reason of this double check, the same identical people were in control of both the bank stock and the new corporation before Banco and after Banco. There was an identity of the people who got the dividends from the bank stock before and after, to the extent that they exchanged. Some of the people got dividends besides those who exchanged.

I don't know it to be a fact that the dollars that a person got on Banco stock received in exchange for Trustees' Certificates was the same number of dollars received on the Trustees' Certificates before the exchange.

The dividend was \$16.00 a year on \$100.00 par value old Trustees' Participation Certificates before the exchange. I do not recall that the rate of the Banco dividend was \$0.80 a share.

I had been having meetings with Mr. Brown, and possibly Mr. Jones and others, with reference to the formation of the BancoKentucky Company prior to July 6, 1929.

I stated in my letter of July 6: "In view of the fact that every shareholder of the National Bank of Commerce is still a shareholder of the two institutions, it will be at once seen that the taxable gain would be very large, were it not possible to treat the BancoKentucky Company as a reorganization under the Revenue Act of 1928." National Bank of Kentucky was the old bank. The National Bank of Commerce was merged into it in 1919, I think. A shareholder of the National Bank of Commerce, if he had retained his holdings, was still a shareholder in the two institutions. This National Bank of Commerce was a very old and profitable bank. Many stockholders acquired their stock before 1913, in which case there would be no tax.

I remember very well writing the letter hurriedly and sending it out to Mr. Brown's house. That was Saturday.

Robert F. Vaughan—Cross

There was a meeting on Friday, July 5. The bank always met on Friday.

I was employed as an attorney for the National Bank of Kentucky for the purpose of denationalization in the fall of 1929. During July I sat in at the Board meetings of the National Bank of Kentucky. I usually did, but not always. I did that meeting of July 5 and remained that afternoon, and that is when I had the conversation with Mr. Brown.

It was my recollection that at this meeting on July 5 that the prospectus was read by Mr. Brown. I suppose it was given very careful consideration. I don't recall just how much consideration it was given at that meeting. I know it had been discussed, tentative prospectuses or prospecti, before that. I think Mr. A. J. Carroll had been employed by the National Bank of Kentucky to prepare the articles of incorporation and to frame the stock certificates and subscription. I know he had been employed to file the articles.

This thing was not done hurriedly or without consideration. It was done deliberately and various ideas were advanced, and some ideas were discarded, and the final plan that was agreed on as a result of those deliberations, conferences and consultations, had been given thought and consideration. Undoubtedly the prospectus was corrected many times.

I have no independent recollection of the paper headed "Important Information. . Don't Say it—Write it." Addressed: "To Bob: Paragraphs marked might have a suggestion for you in formulating the prospectus. R. Bean." Dick Bean usually called me Bob. That is Mr. Bean's signature, and it looks to me like Mr. Bean's handwriting. Undoubtedly there was quite a bit of conference as to the exact language to be used.

Mr. Carroll's proposed articles of incorporation were read at a meeting of the Board of Directors of the Bank.

Robert F. Vaughan—Cross

We had several meetings in the Bank of members of the Directors, not sitting as a formally constituted Board. Whether it was read at a regular meeting, I don't recall, but I know he read them.

I signed the consent of the Advisory Committee dated July 12, 1929, Exhibit 8, to the Trustees, requesting them to cause Banco to be organized and approving the letter to holders of Trustees' Participation Certificates. It appears that all the other officers and directors of the Bank signed it. The letter, subsequently dated July 19, 1929, is attached, including the subscription to shares of the Banco Kentucky Company. I assume that the language in the subscription

"I hereby deposit with you Trustees' Certificates for an aggregate of Participation Shares of the National Bank of Kentucky and the Louisville Trust Company, in exchange for which you are to cause to be issued to me two shares of stock of the Banco Kentucky Company for each Participation Share herewith deposited, fully paid and non-assessable, under the terms of the Reorganization Plan as outlined in your letter of July , 1929, if, when and as said plan shall become effective as therein provided."

was in there at the time. I have no independent recollection of these papers, it has been so long a time. It sounds to me like it was in there.

Article 8 of the attached articles of incorporation "The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever" was in there.

The Directors certainly knew that the plan contained the language that was actually used, and every person who exchanged had an opportunity to know it because the plan recites, as I recall, that a copy of the charter was on file at the two banks, the proposed charter, for anyone to inspect that wanted to see it.

Robert F. Vaughan—Cross

The custodians of those documents would have to answer the date on which the proposed charter was available at the two banks for the inspection of shareholders, the T. P. C. holders, or interim receipt holders. It was customary, wherever you have an interim receipt or exchange that way, to provide a copy of the new charter, and details, so that if he wants to see it he can do so, and we provided that here. I assume it was carried out.

Shortly after this meeting of July 12, Mr. Carroll took the articles of incorporation approved that day to Delaware and filed them. The prospectus in its final form met with my approval, as counsel, and with the approval of my tax associates, Miller and Chevalier.

I have not been able to find Miller and Chevalier's letter of July 15 to the Treasury Department. It is the letter referred to in Exhibit 134-1, dated July 30, 1929.

The Department ruled that the Trustees were a corporation or an association within the definition section of the Acts of 1918; that the Trustees were an association or a corporation in that definition. I don't think anybody ever reported it as a taxable gain.

I was employed to effect the liquidation of the National Bank of Kentucky as a national bank and to reincorporate it as a state bank. Of course, the Bank did not liquidate in the ordinary sense. It was supposed to cross from its national charter to its state charter and avoid any interruption in the continuity of the business.

I was employed around the early part of September. The American Legion meeting, I know, was here, the convention, and I think the closing of Banco subscriptions was along towards the latter part of that month. That is my best recollection. I prepared the forms provided by the Comptroller's office for what they wanted, denationalizing the National Bank and converting it into a state bank. Sev-

Robert F. Vaughan—Cross

eral papers had to be prepared, as I recall it. They included first a resolution placing the Bank in voluntary liquidation and naming the Board of Directors as the liquidating agents. Secondly, a certificate of that resolution to the Comptroller of the Currency in order to obtain his approval, which was obtained.

I also prepared Articles of Incorporation for a state bank to be called the Bank of Kentucky. The purpose in selecting that name was not to prevent the public's observing any distinction between the National Bank of Kentucky, BancoKentucky Company, and Bank of Kentucky. You see, the National Bank of Kentucky was originally a state bank, the Bank of Kentucky, before it was ever a national bank, and it was only logical to go back to its old name. Popularly it was always called the Bank of Kentucky, I suppose.

We paid \$4,000 for the charter fees. I drew a contract whereby this new bank would buy the assets and liabilities of the National Bank of Kentucky. I filed an application with the Federal Reserve Bank of St. Louis for the admission of the new state bank into the Federal Reserve system. This was done before the stock market crash. The stock market crash had nothing to do with this attempt to get out of the National System. BancoKentucky Company was formed before the stock market crash. The plan was declared operative and effective before the stock market crash. All the stock that was sold at the time they deemed that enough cash was realized to go ahead was before the stock market crash.

It was necessary that a bank as large as the National Bank of Kentucky have rediscount privileges with the Federal Reserve if it was to function satisfactorily. It certainly was at that time because you could not interrupt the continuity of that relationship all at once.

The letter Mr. Crawford asked me about, the letter of October 22, 1929, from the Federal Reserve Bank, Exhibit

Robert F. Vaughan—Cross

54, referred to conditions which certainly were not created by the subsequent stock market collapse. I presume the condition referred to as existing in the National Bank of Kentucky must have come into existence during the period when the country was thought to be abnormally prosperous.

The letter is addressed to Charles F. Jones, Cashier of the National Bank of Kentucky, and a copy of that letter was sent to me. I received a letter from Mr. Stewart, the Assistant Federal Reserve Agent, under date of October 24th.

Said letter was offered in evidence as Plaintiff's Exhibit No. 157.

Exhibit 157 enclosed this letter of October 22nd in which it says "With reference to your request for an examination of the new state bank"—they point out that they cannot admit this new state bank to the Federal Reserve System without an examination. Then they say:

"We prefer to defer the examination until the new state bank has received its charter and has taken over such assets and liabilities of the National Bank as it is going to have. This will give the management ample opportunity to correct the criticisms contained in the last examination of the National Bank as of May 25, 1929. In this connection, I attach a list of substandard assets which we feel should not be taken over by the new state bank."

That called my attention to the fact that there was a criticism of this National Bank in the Bank Examiner's Report of May 25, 1929. It is my testimony that the list of substandard assets was not enclosed with the copy sent me but I knew, from this letter, that Mr. Jones had such a copy. I did know that the National Bank of Kentucky, which was the largest unit of the Banco chain, was at the very outset under criticism of the National Bank Exam-

Robert F. Vaughan—Cross

iners. But I didn't take it very seriously, for the reasons I gave, I think—may I make an explanation of that statement, Judge?

It is just this, that Mr. Martin, the Federal Reserve Agent at St. Louis, stayed over in here for a week or ten days and criticized the collateral loans in banks, trying to get the bankers to be good boys and not take any more collateral loans. He said Louisville was the worst city in the Eighth Federal Reserve District about that. I took it—all banks here were criticized, and there was no flag or warning to me that the National Bank was in trouble.

The last paragraph of the letter, in which Mr. Stewart stated to me:

"Of course, if the application is approved, it would be done subject to the conditions contained in Regulation H issued by the Federal Reserve Board, series of 1928, and also upon condition that certain objectionable assets are not taken over by the new institution and other criticisms corrected. Shortly after the new bank opens for business, our Examiners would make an examination to see that the conditions have been complied with."—

was a statement to me that there were objectionable assets and other criticisms. But I did not at the time regard it as a warning of anything serious.

Then he put a postscript on it calling attention to Section 9 of the Federal Reserve Act which specifies

"The Federal Reserve Board shall consider the financial condition of the applying bank, the general character of its management, whether or not the corporate powers exercised are consistent with the provisions of this Act."

As I recall it, there was a provision which required every state bank admitted to be examined.

Robert F. Vaughan—Cross

I never saw this list of substandard assets totaling \$4,000,000. I never asked for it. I didn't think I was entitled to see it. I was not a member of the Board of Directors. As far as being entitled to see it I was a director of the company which owned the stock of the Bank. But that transaction had just about become consummated at the time.

I talked to Governor Martin or Mr. Stewart of the Federal Reserve Board by long distance telephone. I was told that the Federal Reserve System would not admit the new bank to membership without an examination. He did not tell me that there was some trouble there.

I don't recall testifying the first time in the Building case before Judge Cochran that

"Governor Martin didn't come to Louisville to talk to me about this matter, but I talked to him once on the telephone prior to this time the resolution in March, 1930, rescinded the liquidation. I don't know definitely that the Federal Reserve System would not admit the new bank to membership, but I did know there was some trouble there."

If I made that statement I was certainly stating what was true at the time, but I had no conversation with him in connection with letter you just read there.

The failure of the new bank to get into the Federal Reserve was the thing that made me postpone the original effective date of the cross-over to October 15th.

If the Court please, this is what happened: After I set the cross-over, the effective date of the cross-over, from the National Bank of Kentucky to the Bank of Kentucky originally in a resolution, I think, for October 15th, I communicated with the Federal Reserve Bank so there would not be any interruption of their rediscount privileges. It was then that I was told they would require an examination. I then asked when they could get their examiners

Robert F. Vaughan—Cross

over and I was told not before October 15th, so I had a resolution drawn rescinding the period, the time. That happened in this period we are talking about now.

We got the charter for the reason that we had to have the state bank already set up and ready to go when the resolution became effective.

Plaintiff's Exhibit 158 are all authentic copies of letters I wrote to the persons I addressed or copies of letters I received.

Said letters were received in evidence and marked for identification "Plaintiff's Exhibit No. 158" to Plaintiff's Exhibit No. 158-17," inclusive.

I submitted a bill June 5, 1930, to Mr. Brown reciting my services in connection with the denationalization of the National Bank of Kentucky and the organization of the State Bank of Kentucky. This is the original bill. On this bill I say I was employed about October 1st to do this work.

The bill says, "About October 1st I was employed to do the above work, through Mr. Charles F. Jones who called me over the telephone. I went to his office at the bank and spent the remainder of the day in outlining the plan of procedure, copy of which was furnished to him. It was decided to rush the procedure as rapidly as possible, fixing October 15, 1929, as the effective date of liquidation." I don't recall why, on October 1st, 1929, they wanted to rush the procedure except that was about the time Banco-Kentucky was being organized and I suppose it was to time it with that. They never gave me any special reason for it.

I recall when I called up Mr. Stewart, the Assistant Federal Reserve Agent, and tried to get him to waive the requirement for admission.

I don't think I went to see Mr. Moore, of the local branch of the Federal Reserve Bank, to try to get him to waive the requirement for admission. I don't think he could have.

Robert F. Vaughan—Cross

My idea was, in the event that examination had to be made, we might work out some temporary facilities for the Bank in handling their rediscountable items through that branch. Of course, Mr. Moore would not have authority to waive it. At any rate they would not waive it.

Said bill was filed, marked for identification "Plaintiff's Exhibit No. 159."

I don't recall that the directors of the two institutions considered that a merger of the Bank of Kentucky and the Louisville Trust Company, under State Law, as early as the fall of 1929.

My recollection is refreshed by my letter of January 25th, 1930, Exhibit 158-60, which says "Early last fall the directors of the two institutions, together with Mr. James B. Brown, President of the National Bank of Kentucky, and Mr. Richard Bean, President of the Louisville Trust Company, were favorably disposed toward denationalization of the National Bank of Kentucky and the organization of a state bank under the laws of Kentucky as its successor; and it was at one time considered (though never decided) that a merger of the Bank of Kentucky and the Louisville Trust Company, under state law, might be of considerable advantage in the prosecution of the business conducted by the two banks." I thought you were speaking of the time when we did get down to the actual consideration of it seriously, which was much later than this.

Defendants' objection having been sustained, the plaintiff offered the following avowal: "Now, in the final analysis, you could not go through with the scheme to denationalize because the Federal Reserve Bank would not agree to take this new state bank in until it had eliminated the bad assets and corrected the criticism.

I think I was a member of the committee to value Caldwell and Company. I do not remember who the other members of that committee were.

Robert F. Vaughan—Cross

I recall testifying before the Grand Jury of Jefferson County between February 23 and February 27, 1931. I said there that there was a resolution passed on May 29, 1930, appointing a committee consisting of Mr. Jones, Mr. Boomer and myself to assist Mr. Brown, the President, in determining the value of the assets of Caldwell & Company. I did not recall the personnel until you reminded me. That committee never met. We never valued the assets of Caldwell & Company and never made any attempt to. The only information we had with respect to the value was what Mr. Caldwell stated to Mr. Brown. And what Mr. Brown reported to us.

I didn't know the Kentucky Wagon Works was a sore spot. It was represented to us by Mr. Brown at the time we went in with the Louisville Trust Company that the Wagon Works loan did not exceed \$500,000. That is one reason why, if I had got a copy of those assets from the Federal Reserve man, I would have jumped right out of the window.

I knew that in this deal Caldwell & Company was to take over the obligations of the Kentucky Wagon Works so as to get it out of the Bank.

"335—• • • You did know that Caldwell & Company, in this deal, were to take over the obligation of the Kentucky Wagon Works so as to get it out of the Bank, didn't you?

A.—Yes, that is true.

336—And 100,000 shares of Banco Kentucky stock were allocated as a sort of consideration for Caldwell & Company lifting that load out of the National Bank of Kentucky?

A.—I think that was the figure."

I don't think Caldwell & Company actually did take the Kentucky Wagon Works over. I have forgotten, to tell the

Robert F. Vaughan—Cross

truth. I didn't regard the transfer of the Kentucky Wagon Works to Caldwell as unloading anything on him. It was at one time considered to be a very valuable property. I think Caldwell was in better shape to administer that and put it on its feet than a national bank, perhaps. I know that was the way the deal struck me, that it was easier for Caldwell to do that.

Before the Grand Jury I was asked if I didn't consider at the time that it would help the National Bank of Kentucky and I answered: "Of course, I was not a director in that company. Of course, everybody knew the Wagon Works was a sore spot in all of the banks. We were all glad to see the opportunity to clear up the liability." When I said "sore spot" in all the banks I was referring back to the old condition, when the old Wagon Works owed a great number of Louisville banks. It was a money maker years ago, and Mr. Brown, as I recall it, bought or compromised the notes of the other banks and attempted to reorganize the business and make it a success.

Defendant's objection having been sustained the following was offered by plaintiff as an avowal. I was then asked:

"That was the added inducement for the Board of Banco agreeing to the Caldwell deal?"

And I said:

"I don't think that was true so much as to the men on the Louisville Trust Company, but I do think it did as to the directors of the National Bank of Kentucky."

At the time we allocated 100,000 shares to Caldwell & Company as a consideration for taking the Kentucky Wagon Works off our hands Banco stock was selling on the market at \$17.

344—That would be \$1,700,000 given to Caldwell to take over an obligation that you thought was only \$500,000?

Robert F. Vaughan—Cross

A.—At the time we made this deal with Mr. Bean and Mr. Brown, which was around January 1, 1926, I think—I think that was the date—it was represented to him that the line at that time was \$500,000, according to what Mr. Bean and Mr. Dosker told me.

345—It sounds like a very excessive consideration to give Caldwell \$1,700,000 in stock to take over \$500,000.

The Court: Don't argue the case, just ask him questions. Objection sustained.

As a matter of fact I knew when we made this arrangement for a trade with Caldwell in the summer of 1930 I knew that Caldwell owned banks. I think the failure of the Bank of Tennessee which was owned by Caldwell & Company, and the publication, under the laws of Tennessee, of its inventory of assets and liabilities, caused some of the country banks to withdraw their deposits from the National Bank of Kentucky. Along the line some other persons, when they found out that the Bank of Tennessee owned Banco stock, that, in turn, caused disquiet among some of the large depositors. That, in my judgment, would be what ultimately caused the collapse of the Banco chain.

I don't know whether Caldwell owned banks in Arkansas directly or not. I testified before the Grand Jury: "Two weeks before our banks failed here there had been failures in Tennessee and Arkansas of banks, notably the Holston, the Hermitage, American Exchange and about forty banks that were chained up with that bank in Arkansas." There was a chain of banks in Arkansas, but whether they were owned by Rogers Caldwell, I couldn't tell you. They may have been affiliated with some of his businesses.

The only bank Mr. Caldwell was connected with in Nashville was the Fourth and First. His father, Jim Caldwell, was President. The failure in Nashville was the Hermitage National. I don't think it was owned by Caldwell. If Cald-

Robert F. Vaughan—Cross

well owned the Hermitage National it is news to me; I never knew it.

I was a member of the committee of lawyers who went up to Jim Brown's house on the night of May 29th to go over the contract with Caldwell and approved that contract. I think the other lawyers were Mr. Carroll and Mr. Kennedy Helm. I think all the lawyers of the Board were invited to go. That is my recollection. Mr. Brown stated at the meeting that Mr. Dodd was out of town, and Judge Rutledge was sick, as I recall it. It was the understanding that we were going to deliver the Banco stock to Caldwell, part of it, before an audit of Caldwell & Company was made. It was the intention to deliver part of the Banco stock before the assets of Caldwell had been determined, under the contract part of it was to be held in escrow, I don't recall that that was a last minute idea.

It was the original idea that all of it would be held. Mr. Dodd went out of town and was not at the meeting, and thought the Board had run out on him. There undoubtedly was a change in the intention. I knew at that time that Caldwell would not submit to an audit at that time. I don't think I ever saw a financial statement of Caldwell & Company. He never made one. I never saw a balance sheet.

It happened this way. This supplemental agreement about Caldwell delivering 100,000 shares of Banco Kentucky Company stock to the National Bank of Kentucky for its interest in the Wagon Works, was not discussed at Mr. Brown's house that night. It was discussed at the Board. Caldwell wanted to get back to Nashville that night. There were three lawyers there and we had no stenographic facilities and we almost overlooked this Wagon Works thing. As I remember it, this was drawn up in long hand on a sheet of yellow paper and signed before he left. It was not discussed at all. I made the actual

Robert F. Vaughan—Cross

delivery of the stock in Nashville on the Monday following the trade. I delivered 900,000 shares and took their receipt. They endorsed in blank and redelivered to me 200,000 shares for deposit in escrow in the Louisville Trust Company and I gave them my receipt. I think that was Monday after the contract was signed—June 2nd. The additional 200,000 shares of that stock were placed in escrow about September 1st.

I can tell you why it was. Rogers Caldwell said he could not give us that audit during the summer or that inspection that this committee I was a member of was supposed to make. Mr. Brown exacted of him the return of these 200,000 shares until that audit could be made. The first 200,000 shares were turned over at Rogers Caldwell's house on June 2nd, and the second 200,000 shares on September 1st.

All I know about the addition 200,000 shares being placed in escrow is that one night Mr. Brown called my residence about 11:30 and said he wanted to know if I would draw a little contract for him. And he came by the house and had a letter from Caldwell in which he said he was surrendering 200,000 shares to be deposited in the Louisville Trust Company in escrow just as the other stock was. On the next day I drew just a form escrow agreement with the Louisville Trust Company for that 200,000 shares. The 200,000 share certificates were handed direct to the Louisville Trust Company by Caldwell the next day. The only conversation I had with Brown was in regard to the terms of the instrument. It was very late and he was hurrying home and he asked me what I thought the contract should provide.

I told him it should be in line with the terms of the original contract. The reason he offered for getting the additional 200,000 shares was he said he had not completed his

Robert F. Vaughan—Cross

final examination, and that Caldwell did not want to have a final examination and that in consideration of that he was surrendering the additional 200,000 shares.

I haven't the slightest idea at what Banco was quoted in the market. There was no effort made to protect the stock of the company, on a declining market, that I know of.

I never saw any letter from Mr. Bean to Mr. Brown discussing the fact that one of the advantages of forming the BancoKentucky Company was that there would be no assessment on the bank stock. I never saw any such letter.

The Court: Objection sustained; that is in the charter anyway; regardless of what discussion about that time may have been, it is in the charter or articles of incorporation of BancoKentucky.

Mr. Crawford, counsel for defendants, stated to the Court that in September, 1930, September 3, the Chicago Stock Exchange quoted Banco stock at 17 high and 16 $\frac{7}{8}$ low. It closed at 16 $\frac{7}{8}$.

At the time Mr. Caldwell surrendered another 200,000 shares the stock was then being quoted on the market at a price which would have aggregated \$3,200,000.00.

The means by which the objectives of the BancoKentucky was to be obtained was by the acquisition of a large group of banks. That was to furnish the reservoir of capital, the reservoir of money that was needed to carry out this project.

I accept the correction to my statement in direct examination that the tax question about which I was employed came up after Banco's charter was filed. The tax matter was July 5 or 6 and the charter was filed July 16. My confusion on that was due to one thing, and that was that Mr. Carroll left here the first of July. I know he was at that meeting when Mr. Brown spoke to me about the tax gain, and I assumed he had filed the charter.

Robert F. Vaughan—Re-direct

I subscribed for some Banco stock myself. I borrowed the money to pay for these subscriptions from the National Bank of Kentucky. I think my note on the original subscription was something like \$18,000.00 as I remember it, and I posted some collateral on it. I put up the Banco stock as collateral and other securities worth about \$2500.00. There wasn't any market in the other stock but they stood me \$10,000.00. The other collateral sold for \$2500.00 after it got in some trouble. Up to the time of the closing of the bank I think I had paid \$500.00 on this \$18,000.00 note.

On re-direct examination Mr. Vaughan, examined by Mr. Crawford, testified as follows:

The building at Fifth and Market Streets of the Louisville Trust Company, is an office building, very well tenanted with lawyers because it is so close to the Court House. I don't remember the details of the remodeling of the banking room and vault. There were other tenants in the building at all times. The building is seven or eight stories in height and is practically half a block away from the Court House.

With regard to tax gain, the ruling under which the reorganization was allowed avoided the tax on the transaction of the exchange of BancoKentucky at two for one, for Trustees' Participation shares, but of course, if any man sold Banco, whatever realization was made, he paid the tax. In other words, it simply postponed until the sale of Banco stock any payment of taxes. Until there is a sale there is no taxable gain. The split in the stock in no way affected the tax situation, or the amount realized by the sale when he sold Banco.

There was no agreement made between the Trustees' certificate holders and the BancoKentucky Company to keep their Banco indefinitely or for any length of time.

Robert F. Vaughan—Re-cross

I got my dividends on my qualifying shares.

If I stated that the stockholders of Banco still got the same dividends or still obtained dividends from the bank I was incorrect and I misunderstood the question. They got their dividends from the BancoKentucky Company.

There was no agreement entered into that the BancoKentucky Company would turn over to its stockholders all of the dividends it receives from either the Bank or the Trust Company, that I ever heard of. If they did obtain the same dividends it was then merely coincidental. I can say this, that we expected dividends on the Banco stock at whatever it earned. It might be more or less than the Bank stock. Whatever it was, we expected to get. We got it from the BancoKentucky Company after a declaration by the Board of that Company. The National Bank of Kentucky, as a bank, had no say as to what the declaration of dividends by Banco should be.

I was not familiar at all with the set up of the Wagon Company in the Bank. I didn't know a thing about it. I knew nothing about how much the Bank had charged off on the account until after the Bank closed, when those facts became somewhat public.

On re-cross examination Mr. Vaughan, examined by Mr. Marx, testified:

There is no taxable gain until there is a sale or outright transfer on an ordinary exchange of property for other property, but if you follow the technique set up in that section of the statute then there is no taxable gain realized until you sell the property you receive. So long as the stock we continued to hold was BancoKentucky stock there was no taxable gain..

With reference to the question Mr. Crawford asked me, whether the National Bank of Kentucky had any control

Robert F. Vaughan—Re-cross

over the amount of dividends that were paid by Banco, the stockholders of the two banks, the Trustee Participation shareholders, acquired by the exchange a majority of the stock of the BancoKentucky Company. As I understand that Trust Agreement, it was an indivisible trust estate. A man didn't own any of the Bank of Kentucky or the Louisville Trust Company, he had stock in an indivisible trust estate in the two banks, and as might be augmented from time to time by accretions to it. But at the time of the exchange there were no banks in it except the National Bank of Kentucky and the Louisville Trust Company. At the time of the exchange of Trust Shares for Banco shares the Trustees had all the stock of the Louisville Trust Company.

For all practical purposes the owners of the Trustees' Participation certificates were the owners of the bank stock. And the owners of the bank stock, these two banks, had legal control of the BancoKentucky Company through the ownership of more than a majority of the stock of BancoKentucky Company. That is the way it started out. Of course, the picture might change with sales. I don't know that the majority of control ever did change up to the time they closed.

I suppose that every dividend that was declared by the National Bank of Kentucky was declared by resolution of its board; I don't know, I wasn't a director of that bank.

Defendant's objection to the following question: "And these men that declared those resolutions sat on the board of the BancoKentucky Company?" was sustained and plaintiff made the following avowal:

"If the witness were permitted to answer he would say that the same individuals who, prior to the organization of the BancoKentucky Company, controlled the National Bank of Kentucky and its Board of Directors,

Charles A. Schuck—Direct

or elected its Board of Directors by virtue of their ownership of Trustees' Certificates, after the organization of the BancoKentucky Company controlled the voting of the same Trustees' Certificates by virtue of their owning more than a majority of the stock of the company which now had their Trustees' Certificates and which they created to hold them; and in addition, that the same individuals who composed the board of directors and officers of the Bank prior to the formation of the BancoKentucky Company composed the Board of Directors of the Bank after the organization of BancoKentucky Company with a few exceptions that have been noted here, and also composed the Board of Directors of the BancoKentucky Company, which, through its ownership or holding of all the stock of the Bank voted for the Boards of Directors of the Bank."

Charles A. Schuck,

called for defendants, examined by Mr. Dietzman, testified as follows:

My name is Charles A. Schuck. I have been employed by the Louisville Trust Company since 1927 in charge of the stock transfer department.

The Louisville Trust Company was transfer agent for BancoKentucky Company at all times. The transfer books of Banco came under my control and all entries were made under my supervision. At the request of Mr. Allen Dodd I went over the transfer books of the BancoKentucky Company and made up a statement or list of the stockholders as of and including November 15, 1930. In making an analysis of the stock owned by the various stockholders I made four categories. One—exchanged Trustees' Participation Certificates for Banco stock. Two—original subscribers for Banco stock. Three—other bank stock—and when I say that I mean other than Trustees' Participation Certificates exchanged for Banco. Four—otherwise acquired Banco.

Charles A. Schuck—Direct

The otherwise acquired Banco group would include purchases on the market.

This list which I prepared from the books of the Banco-Kentucky Company, from the original stock ledger stub books, is correct. During the preparation of this case I made another list of these stockholders which Mr. Dodd had here this morning. After I prepared that list my attention was called to a list prepared by Mr. White, known as Plaintiff's Exhibit No. 148. In comparing this first list I made, with Mr. White's, I discovered there were some discrepancies in my first list. There were not very many. They involved no larger an amount than 2,500 shares of Banco.

This last list is correct. The total number of shares shown by my list compares with the total number shown in Mr. White's list, the only difference being in the classification. The classification is different. The classification I made according to this exhibit is correct.

Said exhibit was received in evidence and marked for identification "Defendant's Exhibit No. 8."

My classification of the various classes of stockholders differs from that of Mr. White. I will give them to you by groups. The Receiver's list, prepared by Mr. White, shows as the first classification, Trustees' Certificates exchanged for Banco, 1,063,517 shares, and in percentage, 51.32 per cent. The Transfer Agent's list shows, as to same classification, 827,645 shares, or in percentage, 39.94 per cent exchanged for Banco. Now, in the next classification, original subscriptions for Banco, the Receiver's list shows 191,556 shares, or in percentage, 9.24 per cent; the Transfer Agent's list shows 329,848, or in percentage, 15.92 per cent. The third classification, exchanged for other bank stock, the Receiver's list shows 159,833 shares, or in percentage 7.71 per cent; the Transfer Agent's list shows 169,356

Charles A. Schuck—Direct

shares, or in percentage, 8.17 per cent. The fourth classification, shares of Banco otherwise acquired, the Receiver's list shows 168,476 shares, or in percentage, 8.13 per cent; and the Transfer Agent's list shows 326,504 shares, or in percentage, 15.75 per cent; shares held by Caldwell & Company, the Receiver's list shows 489,086 shares, or in percentage, 23.6 per cent; the Transfer Agent's list shows 419,115 shares, or in percentage, 20.22 per cent.

I have taken from Plf's Ex. 8 the total number of shares subscribed for by Directors of the Bank and Trust Company. I have here, as taken from the record, the total number of shares subscribed for by the Directors. However, that does not compare with Ex. 8. It does not because certain of the shares subscribed for by the Directors were later disposed of, between the organization and the close. As of October 15, 1929, my record shows the Directors subscribed for 47,188 shares which, multiplied by \$25.00, is \$1,179,750.00.

I have made an analysis as to all the Trustees' Participation Certificate holders who exchanged their certificates for Banco and the amount of original Banco stock they subscribed for. This record is taken as of October 21, 1929 —That was the dividend pay date. On this date 646 individual holders, or 29 per cent of the holders, owned 143,762 Trustees' shares, or approximately 26 per cent of all outstanding Trustees' shares. These 646 individuals subscribed for 178,878 shares of Banco Kentucky Company capital stock at a price of \$25.00 per share, or a total of \$4,471,950.00. That subscription amounted to approximately 45 $\frac{1}{3}$ per cent of all shares of the Banco Kentucky Company subscribed for.

Said papers were received in evidence and marked for identification "Defendant's Exhibit No. 9 and Defendant's Exhibit No. 10."

Charles A. Schuck—Cross

I prepared a list of depositors in the Louisville Trust Company who, as of November 15, 1930, were stockholders of BancoKentucky Company. This list was prepared from the individual deposit record of the Louisville Trust Company showing the amount of cash on deposit by each of these individuals who were also stockholders of the Banco-Kentucky Company. On November 15, 1930, they had on deposit a total of \$858,093.71.

Said paper was received in evidence and marked for identification "Defendant's Exhibit No. 11."

On cross-examination by Mr. Marx, Mr. Schuck testified as follows:

The total number of Banco shares in my exhibit agrees with that in Mr. White's exhibit. The difference between Plf's Ex. 148 and Dft's Ex. 8 is in classification. I have looked over Mr. White's classification. It is by individual stockholders.

It states in the explanatory sheet accompanying it that the schedule shows the name of all stockholders of the BancoKentucky Company, as of November 17, 1930, the amount of the assessment, the total shares held by each stockholder and a classification of the stockholders, showing the number of shares held by each group. Now my classification is a classification of stock.

Mine is a classification of stockholders and the stock they held. You will find the same names in my list as you will find in Mr. White's and the total number of shares shown in my list will compare with the total number of shares shown in Mr. White's list.

Obviously if the total number of shares is the same there is a difference in the classification. Otherwise the result would be the same. We were working with the same identical figures.

Charles A. Schuck—Cross

For example, take Miss Bettie F. Alford in my list, Ex. No. 8. She got according to the record of the Transfer Agent, 50 shares of Banco Kentucky stock in exchange for Trustees' Participation Certificate. That means that she, as an individual, was at the outset of Banco Kentucky Company an owner of Trustees' Participation Certificate or bank stock, as to the 50 shares. She was a holder of Trustees' shares and deposited them for exchange into Banco. Then she subscribed for 25 additional shares. Then she exchanged some other bank stock for Banco. I put her in all three different classifications. At the end she wound up by having 125 shares of Banco.

Now Mr. White classified her, since his classification is by stockholders, as being in the group of original parties, and as holding at the close 125 shares of Banco. But I split her into three classifications. I put her stock she received through the exchange of Trustees' shares in one classification. I put the stock she got by her original subscription to the plan in the second classification. And I put the stock she got by exchanging other bank stock for Banco stock in still a third classification. I put the same individual into three different classifications according to how she acquired the various shares of Banco which she held.

What I have classified is the different shares of stock held by each individual. Whereas Mr. White classified the stockholders, as individuals, as to the amount of stock they held.

Under Mr. White's classification of stockholders, a man, for example, who knew all about the plan for the formation of Banco, was an incorporator, and owned at the close 1,000 shares of Banco. Whether he acquired his 1,000 shares, 500 of them at the beginning by exchange of Trust Certificate and 250 originally by subscription to the original plan, and subsequently 250 more by purchase in the open market, that man does not change as an individual.

Charles A. Schuck—Cross

Mr. White has classified that man as one person and put his holdings, his total holdings of Banco stock on the day Banco closed, in one category. As of the close, Mr. White has classified his total number of shares owned by original participant in the plan under one classification. I have not done that in the manner in which Mr. White has.

The Court: The witness says he has classified such a shareholder in three classifications by showing what he exchanged for Participation Certificates; he has identified him as of that kind of holder, and also he made a purchase, and also as an owner who subscribed for stock.

When I aggregate the Banco shares by classification I put in my first classification all shares of Banco stock originally received by the several holders in exchange for their Trust Certificates and still held at the close, regardless of how many shares those same people owned in other classifications at the close.

In my second classification I have shown the number of shares of stock that were held by these stockholders at the close which were obtained by original subscription by the particular stockholder. That is regardless of how many other shares that same stockholder may have held which he acquired in other ways. In my third classification I have only taken the stock acquired by exchange of other bank stock and held by the stockholders at the close of Banco to determine the percentage of stock in that classification, regardless of how much stock the stockholders may have acquired in other ways.

It is perfectly true that there is just one fundamental difference between my classification and the classification of Mr. White's. Mr. White classified the stockholders and I classified the stock.

An Interim Receipt is the Trustees' Interim Receipt which was issued to the original Trustees holder upon their

•Charles A. Schuck—Cross

deposit of their Trustees' shares of Bank and Trust Company stock and which provided that it was exchangeable for Banco stock on the basis of two shares for each of the Interim Receipts upon the organization of Banco being declared effective.

If a man brought in one of these Interim Receipts during the summer or fall of 1929 I classified him as otherwise acquiring Banco. If he had exchanged Participation Certificates for Interim Receipts and later exchanged Interim Receipts for Banco, I classified him as having exchanged Trustees' Certificates for Banco, that is, an original depositor of Trustees' Certificates.

Interim Receipts were traded in on the open market. If a man brought in an Interim Receipt for Trustees' Participation Certificate deposited by some other person, I treated him as being "Banco otherwise acquired" because his Interim Receipt was exchangeable if, as and when Banco was declared effective, only for Banco.

If \$1,000 in Interim Receipts were issued for Participation Certificates and those Interim Receipts were assigned to a purchaser who exchanged them for Banco stock, and such purchaser was classified in the otherwise acquired group then that classification would be \$1,000 more than Banco stock acquired by original holders of Participation Certificates.

If \$1,000 in Interim Receipts were issued for deposited Trustees' Participation Certificates and such Interim Receipts were transferred to a purchaser who exchanged them for Banco stock, and such purchaser were classified in the otherwise acquired group, then that group would be \$1,000 more than the classification of Banco stock acquired by original holders of Participation Certificates. But these Interim Receipts were traded in on the open market as Banco.

Charles A. Schuck—Cross

The Interim Receipts were treated generally speaking, as Banco stock. They were outstanding against the Trustees' Participation Certificate pending the issuance of the Banco Kentucky stock certificates.

Under my classification, if a person got 500 shares of Banco by exchange of Trustees' Participation Certificates and subscribed for 200 shares, and bought at various times 300 shares, and then have these 1,000 shares all put into a permanent certificate for 1,000 shares, then sold 100 shares and later sold 125 shares and still later 25 shares and wound up with 750 shares, my classification only pertains to what he held at the close.

The Transfer Agent's record plainly shows where a stockholder wound up with one certificate after having made several sales, whether he sold the stock he received by exchange of Trustees' Participation Certificates or whether he sold the stock he got by subscription or which he had otherwise acquired. That could be shown by checking the record straight back through the stub book as to the certificate numbers themselves. Each certificate came into being by reason of other certificates.

The example put to me,—a person holding one 1,000 share certificate then making several sales and finally winding up with a certificate for 750 shares—never occurred. But in such a case it would be impossible to tell whether the stockholder sold the shares he acquired through exchanging Trustees' Participation Certificates or by subscription or by purchase on the open market. It will be impossible to allocate the shares.

In every instance I could tell whether the stockholder were selling subscription stock, purchased stock or exchange stock. In no instance did any certificate come in as a whole certificate of various classes and then have to be broken down. In no instance did I have to make any assumption that certain stock was sold from a certain classification.

T. K. Helm—Direct

If Jones was a Participation holder and exchanged his certificate for Banco and gave that to his wife I would classify her as otherwise acquired. If the wife died and the husband got it back or she transferred it back to him I would classify him as otherwise acquired even though he was an original participant and got that stock by exchange. If Jones pledged his stock as collateral and it went into the name of a nominee and so remained at the close I would classify it as otherwise acquired.

If Banco stock was issued in the name of a nominee and subsequently retransferred to the original stockholder and new certificates were issued the latter would be classified as otherwise acquired unless I could positively identify the stock by going back and determining from the record that he was putting it in the name of a nominee. If I could positively identify the chain of certificates and numbers and dates and what not that necessarily goes to make up the record, then I would classify him as being a Trustees' Participation Certificate holder.

Under Mr. White's method, when that stock was transferred back to the original subscriber, he would be classified as an original participant in the plan.

In my analysis I referred to the shares of stock of Banco-Kentucky held by Caldwell & Company, whereas Mr. White referred to Caldwell & Company and its nominees. I haven't a record of the Caldwell & Company nominees.

T. K. Helm,

called by defendants, examined by Mr. Van Winkle, testified as follows:

My name is T. Kennedy Helm. I am an attorney at law and have been engaged in the practice since May, 1897. I have drawn very many corporate charters, certainly in excess of one hundred, and I have served as a director in about twenty or more corporations.

T. K. Helm—Direct

With regard to the Trust Agreement of April 22, 1927, executed between the Bank of Kentucky and the Louisville Trust Company and Allen and Dodd and others as Trustees, I was employed by the Louisville Trust and Judge Alex P. Humphrey was employed by the National Bank of Kentucky to draft that document. We did so after considering various similar documents that had been drawn in New York with the Irving Trust Company and in Cincinnati with the Fifth-Third Bank, and in Louisville with the First National Bank and Kentucky Title Trust Company, and the Citizens Union and Fidelity and Columbia Trust Company. We made a draft and submitted it to committees of the two Boards and, with maybe a few changes, it was adopted and printed and is now the document in the record.

With reference to interlocking directors in banking and financial institutions, under the Federal Reserve Act, the directors of banks and trust companies could only serve more than one bank with the permission of the Federal Reserve Board upon the recommendation of the Governor of the Federal Reserve District. The necessary forms were obtained and the information furnished as to each of the Directors of the Louisville Trust Company and the National Bank of Kentucky, and forwarded first to Mr. Martin, and then to the Comptroller's office and the Directors of each institution were authorized to serve in the other institution. At that time the chairman of the Federal Reserve Bank in this district was Mr. William McChesney Martin.

As attorney for one of these banking institutions I made application to the Federal Reserve on forms which required information about the competition, nature and location of the banks and other alliances of the persons who were to be directors. Those forms were prepared and sworn to by the individual directors and were sent to Mr. Martin and,

T. K. Helm—Direct

I think, by him taken to our conference before the Federal Reserve Board in Washington where they were approved.

This letter dated May 26, addressed to Mr. William McChesney Martin, Federal Reserve Agent, Federal Reserve Bank at St. Louis, is a copy of the letter I sent Mr. Martin. Said copy received in evidence and marked for identification "Defendant's Exhibit No. 12."

I received blank forms to be executed by the Directors, had them filled out and returned them to Mr. Martin. A copy of the form received from the chairman of the Federal Reserve Board was received in evidence and marked for identification "Defendant's Exhibit No. 13." These forms were filled out by all the officers and directors of the two banks and were all approved except two or three or four, and Mr. Martin wrote back and asked for further information as to them, which was later supplied.

This letter dated June 11th is one I received from Mr. Martin in reference to the application which had been made by me on behalf of these two banks. This letter is dated June 11, 1927; and Mr. Martin asked for further information with regard to the application of Joseph A. Durham, Richards A. Reynolds, and Allen P. Dodd. It says, "Referring to your letter of May 26th, I have today been advised by the Federal Reserve Board that all of the applications contained therein have been approved except those of" the three I just named. Said letter was received in evidence and marked for identification "Defendant's Exhibit No. 14."

About the 5th of February in that year they passed an amendment to the National Banking Act under which national banks were permitted to declare stock dividends, and that was taken into consideration in connection with this plan of unifying the interests of the National Bank of Kentucky and the Louisville Trust Company, and it was

T. K. Helm—Direct

an integral part of the plan, and the basis upon which the trade was made, that the National Bank of Kentucky would apply for permission to increase its capital stock from \$2,500,000 to \$4,000,000.00, declaring a 60 per cent stock dividend. That application had to go to the Federal Reserve Governor of this district, together with a draft of the proposed Trust Agreement of April 22, 1927. His attention was expressly called to the fact that a stock dividend was in contemplation, because the law had only been recently amended, and they seemed to take considerable interest in the subject of how and under what terms a stock dividend would be paid by a National Bank. After considerable correspondence Mr. Martin agreed to accompany a committee to Washington, as the question of the stock dividend had to be passed on by the Comptroller. I think Mr. Stearns was Comptroller, and Mr. Pole was Deputy Comptroller at that time and they had a Mr. Quin, who must not be confused with Judge Houston Quin, was in charge of the organization and reorganization of national banks, and he was called in, and also a lawyer for the Comptroller's Office, and our Trust Agreement was gone over in detail. The statements of the National Bank of Kentucky were considered in detail and the approval was given to the declaration of a 60% stock dividend by the National Bank of Kentucky, effective at some particular date in the future, which I think was agreed on as May 30th or 31st—I can't recollect which. I know I went on a second time and brought back and telegraphed the report that we were set in that respect and the plans could proceed.

I made an appointment on behalf of the Bank and Trust Company, to meet the Comptroller for the purpose of discussing and securing the approval of this plan of increasing the stock and declaring the dividend. Mr. Martin, the Governor of the Federal Reserve Bank of this District,

T. K. Helm—Direct

volunteered to go with us and met our committee in Washington and stayed with us and conducted us to the proper officers and introduced us to the proper authorities. I can't recall exactly who was present at that conference on behalf of the bank. This telegram, dated May 7th, is a telegram received from J. W. McIntosh in re the National Bank of Kentucky-Louisville Trust Company merger, "Glad to see you Tuesday." That was the time we went to Washington. It was the Tuesday after the 7th of May. Said telegram was received in evidence and marked for identification "Defendant's Exhibit No. 15."

Present at that appointment were Mr. John Stites, who was President of the Louisville Trust Company, and Mr. Nicholas H. Dosker, who at that time was a Vice-President of the National Bank of Kentucky, and I, as attorney representing both the parties, because Judge Humphrey was in bad health, or at least, he had a broken leg, went from here and met Mr. Martin, William McChesney Martin, and he took us first to the Comptroller's where we met the representative of that office. Mr. Dosker, Mr. Martin and someone in the Comptroller's office took up the statement of the National Bank of Kentucky. I discussed with a lawyer of the Department the terms of the Trust Agreement that we had. Mr. Stites had someone he was talking to. Some of them were in one large room and I went into a smaller room with this lawyer for a few minutes, maybe fifteen or twenty, and he had certain questions he wanted to ask about the Trust Agreement, which I answered, and the answers seemed to satisfy him. I then returned to the room and joined with the others. They said that they were going to approve, and they did approve, the payment of the stock dividend. Then, we were taken by the Comptroller and Mr. Martin, and appeared before a full meeting of the Federal Reserve Board, and I had quite an informal talk.

T. K. Helm—Direct

They asked about our Trust Agreement and they asked about our directors, and the result of that was that they said they would approve, or thought they would approve the interlocking directors.

The increase in the capital stock of the National Bank of Kentucky and the payment of the stock dividend were approved by the Comptroller. I think it was mostly incidental to our plan that it was discussed before the Federal Reserve Board. I may be in error in saying that the Federal Reserve Board did not have to approve it also but I think the first approval had to come from the Governor of the Federal Reserve District, and then from the Comptroller.

I received this letter, dated May 10th, addressed to President, the National Bank of Kentucky, and signed by Mr. Stearns, Deputy Comptroller. Said letter was received in evidence and marked for identification "Defendant's Exhibit 16." While the letter is addressed to the President, I was at that time handling the details. At that time Mr. McIntosh was Comptroller, and Mr. Pole was Deputy.

I sent the original of a telegram addressed to the office of the Comptroller to Mr. Quin, who was in charge of the organization and reorganization of national banks, in which I asked for an appointment to submit the resolution of the Board and stockholders and the formal certificate in regard to increasing the capital stock of the Bank. This telegram was received in evidence and marked for identification "Defendant's Exhibit No. 16-a." The authorization to increase the Bank's capital had been given by Mr. Quin as head of the department on organization and reorganization.

At the first meeting when Mr. Stites and Mr. Dosker were present, and after they had considered our plan of unification and had approved the stock dividend, the Comptroller, in Mr. Martin's presence, and smiling very pleasantly, congratulated us all upon the unification of the

T. K. Helm—Direct

Louisville Trust Company with such an old and fine institution as the National Bank of Kentucky. The plan of unification and increasing the capital stock of the bank were approved by the Comptroller's office and notification of its approval was sent to us.

My connection with the negotiation and completion of the consolidation of the Louisville National Bank and Trust Company with the Louisville Trust Company was as follows: The idea of merging the Louisville National Bank & Trust Company with the Louisville Trust Company was talked from early in 1929, and there were conferences held between representatives of the Louisville National and of the National Bank of Kentucky before the Louisville Trust Company, the old Directors of the Louisville Trust Company, ever heard of it, and when they did, it developed that the plan was to denationalize the Louisville National Bank & Trust Company and take out for it a state charter for the same amount of its capital, \$750,000.00 and amend the charter of the Louisville Trust Company from \$1,000,000.00 to \$1,750,000.00 and then to take the Louisville National Bank & Trust Company, as a state institution under Kentucky statutes, into a merger with the old Louisville Trust Company. That was worked out with Mr. Robert Vaughan representing the Louisville National Bank & Trust Company, and I was representing the Louisville Trust Company, and that plan was carried out after the Trustees' Participation Certificates were outstanding, and it took the concurrence of the Trustees, and the stock was issued to the stockholders of the Louisville National Bank & Trust Company on a par for par, equal basis.

I can't recall whether stock of the Louisville Trust Company was issued to the stockholders of the Louisville National Bank and Trust Company or if Trustees' Participation Certificates were issued. I don't recall the actual mechanics.

T. K. Helm—Direct

The Louisville Trust Company's charter was amended. It was started as a trust company with no banking powers. It wasn't even a combined bank and trust company. Incident to this merger it amended its charter so as to take on commercial banking and other broader powers than a straight cut trust company would have. Its capital was increased from \$1,000,000 to \$1,750,000 to accomplish the merger. My recollection is that the consolidation between the Louisville Trust Company and the Louisville National was actually completed about May 15, 1929. The negotiations for the consolidation began in the early part of 1929. When the consolidation was accomplished, the market value for Trustees' Participation Certificates, before they were split 10 for 1, was about \$440 odd a share. I think the most I ever paid was \$426 and some cents per share for the Louisville Trust Company—for the Trustees' Participation Certificates. The \$100 par Trustees' Certificates fluctuated during April and May, 1929, somewhere between \$426 and \$444 per share.

I don't know the market value of the Louisville National stock in January, 1929. I know they were taken in on a share for share equal basis, it being represented that they were on a parity in assets and earnings with the Louisville Trust Company.

The discussion began by those interested in the formation of Banco Kentucky Company early in 1929. It was under discussion at the same time the absorption of the Louisville National Bank & Trust Company into the Louisville Trust Company was being discussed. I would say certainly as early as February, 1929.

In February, 1929, I haven't the market reports on the prices for T. P. C.'s. The stock rose in the market especially the Trustees' Participation Certificates, after it became known and generally talked of that Banco would be

T. K. Helm—Direct

formed. I think quite a number of people, from those I talked with, were buying certificates with the idea of getting in on Banco probably at a reduced price from what they would have to pay if they subscribed directly. The market in T. P. C.'s was along about from \$425 up to \$445, but I can't fix any particular amount on a particular date.

My calendar shows that I was in seventeen conferences in connection with Banco, and those conferences took place with various groups. Sometimes the groups would be large, maybe fifteen or more, and other times it would be a group of only five or six. The ones who discussed Banco were the officers of the National Bank of Kentucky and its Directors, and some outside—there may have been stockholders that were not directors, and the same was true as to the Louisville Trust Company, and Mr. Bean and his group of officers from the Louisville National were quite active. Mr. Stites was active, and then, of the directors, there would be a group, say, like Colonel Mengel, Mr. Carroll there, there would be Mr. Coons—I assume they were just picking out some of the leaders in the different boards . . . the Louisville National had Mr. Boomer, Mr. Girdler, Mr. Nick Docker, Mr. Sam Stone, but to try to remember now who attended any one of those seventeen different conferences, without having called a roll or kept a roll would be just plain guesswork.

All I can say is that these meetings were held sometimes after the directors meetings and sometimes it would be a called meeting at 421, which was the building erected by the Louisville National Bank & Trust Company. Sometimes it would be in the directors' room, I think, of the Louisville Trust Company. I remember one dinner meeting at the Pendennis Club or supper, with Mr. Brown—I remember they started supper at 8:30 and that especially impressed me. There would be groups of five or six or seven or eight,

T. K. Helm—Direct

up to twelve or fourteen or fifteen. Banco was generally discussed. It didn't have a name at that time but the general idea was most fully discussed.

The business and purpose to be undertaken and carried on by the corporation was a gradual development in those discussions. It was intended originally to be something like the other allied companies, subsidiaries of banks that could do things that the banks themselves did not have the charter power to do, and then they turned over the subject in their minds in those discussions, and it grew. It was to be a trading corporation, a finance corporation. . . . The corporation was to have a department for underwriting; it was to have a department of statistics, under Mr. Akers, where statistics would be gathered and sold; it was to have a real estate bond department to meet the demands of country banks who wanted bonds for their customers under Mr. Hugh Fleece, who had been General Counsel and Vice-President of the Louisville Title Company and was at that time President of the Bankers Trust Company. It was to have the power to own stock in other corporations and to guarantee the obligations of others. In fact, even in the letter of July 19, 1929, there are 7 or 8 distinct powers mentioned different from those permitted to banks and trust companies under their limited authority.

The purpose, or one of the purposes, was to acquire banks in the Ohio Valley as a reservoir of finance. They expected to extend from West Virginia to Arkansas. It was discussed many times. They did acquire banks in Ashland, Covington, Cincinnati, Louisville, Paducah, and maybe other places, and those banks, in turn, were to be let as separate units under their own management, but as occasion arose, they would be, through the BancoKentucky Company, supplied with desirable investments, and the investments were to be endorsed by the BancoKentucky

T. K. Helm—Direct

Company, which was designed, really, to act as a little federal reserve for them and to have ample capital for that purpose. I don't know that I have, this time or on previous occasions, from memory, recited all the powers they had, but the charter speaks for itself, and that charter was promptly printed, a copy being left in the offices for those who were interested in looking into its charter powers.

I was interested in all the different departments and heard names discussed, but it just happened that I was the one that was requested to talk to Mr. Fleece, by those promoting BancoKentucky Company and by Mr. Brown, who was one of them. I was the one that was selected because he had started his practice in my office, before he was Vice-President and General Counsel of the Louisville Title Company, to bring him into my office to discuss with Mr. Brown and others the feasibility of forming a department for Banco to start in the bond or mortgage business. Fleece resigned as President of the Bankers' Trust Company to look into the future of Banco, about the 1st of August, 1929. I can't remember the date but it was just in the formative state and they thought he would be helpful to us in carrying out these different functions of the Banco-Kentucky Company.

At the request of Banco officers, I conferred with Mr. Fleece and he resigned his job and gave his time to considering that question for BancoKentucky Company, as to how it could organize a real estate mortgage bond department, to cooperate in connection with the bank or chain of banks that might also be allied to the same institution. Banco hired Mr. Fleece. He was not put on the payroll of Banco, because they had no payroll of employees, so far as I know. It fell to my lot thereafter, to go on his note, both at the National Bank of Kentucky and at the Liberty Bank and to pay those notes. In this interim, be-

T. K. Helm—Direct

tween the time he resigned his job and that time it was found that Banco could not continue in as broad a field as had been contemplated.

Mr. Carroll, Mr. Vaughan and I worked on the Banco organization and Mr. Carroll had the draft of the charter, which I might say we others considered, and I will say it is similar to the forms then in existence, and was checked sentence by sentence with the usual provisions and special provisions. While there are quite a few amendments made in the usual form, by reason of these previous discussions as to what Banco was to do, the drafting of the charter itself was left to Mr. Carroll, and when he left Louisville he took it with him. He was going to Atlantic City, and on information being sent to him that certain other steps had been taken, he went to Dover, Delaware, and filed it on the 16th day of July, 1929, and telegraphed back that the charter had been filed.

I got the money for the fees for the preliminary legal work, including the preparation of the charter, and I think there was a split three ways between Mr. Vaughan, Mr. Carroll and myself. That came in several months after Banco was organized, I think I received about four grand. My proportion was \$4,000. I can't recollect by whom the money was paid or who was my client. The other two attorneys associated with me joined in the bill that was sent.

I don't recall whether or not, in any of the 17 conferences I held with the persons who were interested in the organization of Banco Kentucky, if it was discussed regarding the clause in reference to double liability or the clause in reference to liability of stockholders for the debts of that company or was ever considered in any way. I don't recall that that question was discussed before it was put in.

T. K. Helm—Direct

The Witness: Judge, in connection with my answer, I don't recall whether it was discussed but I want to say that this particular section is copied verbatim from the forms which this charter is taken as a whole, without the change of a word or a letter.

I never heard the question of re-organization discussed from any source at all until Mr. Robert Vaughan, one of my colleagues in the drafting, brought up a question under the Internal Revenue Laws—in regard to the income tax, and I think he has testified and filed a letter in which he said that under certain conditions under the income tax laws, it could be called a re-organization in the sense of the income tax laws. I never heard it discussed until that time.

There was no change in the corporate structure or charter in either the National Bank of Kentucky or the Louisville Trust Company. There never was any considered or discussed in connection with or at the time of or prior to the formation of Banco. There never was discussed any amendment or re-organization of either the Louisville Trust Company under Kentucky law or the National Bank of Kentucky under Federal law at any time. They were to be left exactly as they were then existing, and they were so left without any authority to change or re-organize them in any manner or form.

The matter of Banco being used for the purpose of evading double liability on the part of individual Certificate holders on account of their ownership of bank stock was never discussed, and so far as I know, was never thought of by anyone.

As one of the attorneys I reviewed the letter of July 19, 1929, Plaintiff's Exhibit 24-3, time and again before it was finally in the shape where it was sent out.

The reason and purpose for the use of the term in that letter "Plan of Re-organization" was to come within the

T. K. Helm—Direct

terms of the Federal Income Tax regulations as they had been drawn by Congress. It was only in that respect that that was used and the requirement that at least 50% of the stock of the Trustees' Participation Certificates holders should pass to the BancoKentucky Company, because that was a part of the technical regulations in regard to income tax for the Federal Government.

There was a reason other than that stated by me, for the use of the term "Plan of Re-organization." Banco was named as a third corporation to join this group and was to help re-organize the business done by the Bank in connection with the carrying of an insurance department, bond department, travel department and such details that had become burdensome to banks, and to that extent, it was taking over these departments from the Bank and Trust Company into Banco.

I was acting as counsel for the Louisville Trust Company and for the BancoKentucky Company with other counsel during the summer and fall of 1929. I was requested as attorney for those institutions, to give to the officers an opinion with reference to the identity of BancoKentucky Company with either of the two Banks with which it was associated.

I wrote the letter dated September 6, 1929, addressed to Mr. Nicholas H. Dosker, Senior Vice-President of the Louisville Trust Company. This is the original carbon copy of an opinion I gave Mr. Dosker. That was the opinion I was asked about. Said letter was received in evidence and marked for identification "Defendants' Exhibit 17."

The letter dated September 6, 1929, says that Mr. John Doolan, he is one of my partners who was present when you called me up, thinks I should confirm our telephone conversation by a memorandum. I quote Kentucky Statute 4706 and call attention to the fact that Banco is not that

T. K. Helm—Direct

dividend paying security as is regarded by prudent business men as a safe investment that have been in business for more than ten years—that is a paraphrase from a long quotation from the statute. Then it concludes “as a lawyer you see that Banco stock cannot qualify as a trust estate investment. Wherever the Louisville Trust Company is agent of a principal or the beneficiaries are authorized to consent in writing, their stock or certificates can be transferred or converted into Banco Kentucky, otherwise stand on or sell their investment.”

I think the Louisville Trust Company was organized in 1884. I had been a director since 1911. From 1911 to 1929 it had never failed to pay its annual dividend on its stock. The National Bank of Kentucky had paid dividends consecutively for more than ten years.

I acquired Banco stock. I owned 50 shares of Louisville Trust Company stock. I turned that in to the Trustees and received back 10 shares of National Bank of Kentucky stock, 10 shares of Louisville Trust Company stock and Trustees' Participation Certificates for the balance. When Banco was formed, I transferred my Trustees' Certificates for Banco stock as soon as the books were open.

I was on the Banco Board at the time of the negotiations and contract with reference to the purchase of Caldwell & Company stock. The reason for those negotiations and that contract, so far as I was advised or informed, was that Caldwell & Company was an investment banking house in Nashville doing a wide business in the South and had a great reputation at that time, May, 1930. It was carrying on an investment house business, underwriting bond issues and was largely interested in Government Bonds, so-called Municipal Bonds—

What I mean is that that was Caldwell & Company's general reputation—that it was a house engaged in many

T. K. Helm—Direct

activities in the South,—underwriters, dealer in stocks, bonds and securities and it also had an interest in some banks and insurance companies. It was believed by me, and I think, by the other directors, of BancoKentucky Company, that an alliance with Caldwell & Company would round out what the depression had prevented Banco from doing for itself, and it was for that reason that the contract was got up between Banco and Caldwell & Company, with the idea of rounding out the insurance business and some banks, and more particularly contacts with business organizations throughout the South. It was to round out Banco's general plans and authority.

I exchanged my Trustees' Participation Certificates into the BancoKentucky stock, solely because, knowing the purpose of Banco as outlined in its charter, I thought it would be a profitable investment, and I so advised clients and relatives.

My making of this exchange was absolutely not done with a view to avoid double liability on the T. P. C.'s owned by me. I never heard it discussed and never thought of it. The question of the avoidance of double liability was absolutely not considered by me in any manner whatsoever at the time this exchange was made. I never heard it discussed by anyone.

At the time I made the exchange my recollection is that the T. P. C.'s were worth about \$46 or \$48 a share, bid and asked. At the time of this exchange the condition of the National Bank of Kentucky and the Louisville Trust Company, from my knowledge of their statements and from what I heard at Directors' meetings, I thought that they were both absolutely sound and both beyond any financial difficulty. After BancoKentucky was organized and up to January 1, 1930, I thought the National Bank of Kentucky was absolutely sound. During the same period I believed

T. K. Helm—Direct

and understood the Louisville Trust Company was absolutely sound, as it had been, and both banks earned dividends as in the past. The first time I had any information, knowledge or belief, that the National Bank of Kentucky was or might be involved in financial difficulties was November 15, 1930. I had been off the Board of the National Bank of Kentucky since, I think it was January 13, 1930, and the first I knew was when a town meeting was called to consider the run that had started after the failure of Caldwell & Company.

In December, 1929, I, with others, executed a surety bond for the National Bank of Kentucky. I executed this bond as surety for the National Bank of Kentucky to the City of Louisville in the sum of \$500,000 to pay certain deposits of the City made with the Bank. It was executed pursuant to a statute requiring such bonds of all city depositories, on the 27th day of December, 1929. The penal sum was \$500,000.

At that time, I was a director of the National Bank of Kentucky, but we had already taken action to drop the Louisville Trust Company directors from the National Bank of Kentucky Board because the Board was too large, and the meeting was to be held whenever the statute called for—I think it was the 13th of January, 1930. The new Louisville Trust Company directors, who had come from the Louisville National Bank & Trust Company, were never elected directors of the National Bank of Kentucky, because the Board was too large and unwieldy. A month before I executed this bond, it had been agreed that we were to retire from that Board at the next meeting of the stockholders.

Mr. John Stites, Mr. Walter I. Kohn and myself, who signed that bond were to retire from the Bank Board on January 13, 1930. The other who signed were the directors and the President of the National Bank of Kentucky.

T. K. Helm—Direct

Said bond was received in evidence and marked for identification "Defendants' Exhibit No. 18."

In the minute book of the National Bank of Kentucky which is shown me, for December 16, 1927, appears this statement, "The letter from the office of the Comptroller of the Currency under date of December 12, 1927, was read to the Board of Directors, discussed, and referred to the officers of the Bank for attention." I was present at that meeting. At that meeting a letter from the Comptroller's Office was not read or considered.

According to the minutes I was not present at the meeting of December 23, 1927. Turning to the minutes of June 1, 1928, according to them I was not present. The following statement is contained in the minutes of June 1st: "The letter from the Comptroller of the Currency under date of May 12, 1928, and report of the examination conducted March completed March 31, 1928, was considered and referred to the management for report." Returning to the minutes of the last meeting June 8, 1928, I was present. The minutes of the June 8th meeting recite that they read the minutes of the previous meeting. In the reading of those minutes there was no reference read stating that a letter from the Comptroller had been received at the previous meeting, read and considered.

Turning to the minutes of June 22, 1928, I was there. The minutes state "Letter dated June 14, 1928, from the Comptroller of the Currency was read to the Board, received, and filed." No such letter from the Comptroller was read to the Board at that meeting.

Turning to the minutes of August 31st, 1928, I was absent at that meeting. It is recited in those minutes "Letter dated August 23, 1928, from the Comptroller of the Currency relative to the further progress of items mentioned in the last examination was referred to the management

T. K. Helm—Direct

for report." Examining the minutes of the next meeting, September 7th, I am listed as absent. Turning to the minutes of the meeting of December 7, 1928, I was present. In the middle of the last paragraph on the page "letter from the Comptroller of the Currency under date of November 27, 1928, was considered and referred to the management for reply." No letter from the Comptroller was presented to the Board, read or discussed at that meeting.

There never was a letter from the Comptroller presented to the Board when I was present nor did I ever see such referred to in the minutes of the subsequent meetings nor did I hear them.

At the time of the organization of the Banco Kentucky Company, the Commonwealth of Kentucky was the holder of T. P. C.'s. The Bank of Kentucky was organized as an arm of the Commonwealth of Kentucky about 1834 and in the Constitution of about 1850 it was set over to the Public School Fund as a trust for aiding the Public Schools. It is again referred to in the Constitution of 1891. They owned stock originally in the Bank of Kentucky and then in the National Bank of Kentucky. I never heard of any other stock owned by the Commonwealth. They transferred their stock in the National Bank of Kentucky into Trustees' Participation Receipts in January or February, 1928. I was called many times before the Board of Education, and by these Sinking Fund Commissioners and I did appear and explain, as best I could, the relation of Banco to the Trustees' Participation Certificates. I made this explanation to the Board consisting of Mr. Bell, Superintendent of Instruction, Miss Ella Lewis, Secretary of State, and Attorney General Cammack and on some occasions his son, who is now on the Court of Appeals, was present in some capacity. The Board adopted resolutions asking an extension of time for converting their stock.

T. K. Helm—Direct

I explained very fully to the Board that Banco was a new corporation with wider powers, and they asked me as to whether or not it was under the supervision of either the Bank Examiner or the State Banking Commissioner. I told them it was not and they took time and had an extension and voted an approval to exchange provided they could get an enabling act from the legislature. They understood very distinctly. General Cammack, who is chairman of that Board, is here and will be here. He drew those resolutions that gave the history of the transaction very fully. They pressed the question whether Banco was an entirely independent separate corporation, both with Mr. Bean and myself and we both answered that it was an independent organization. We told them most distinctly that it was an independent separate corporation with broad charter powers.

This Board, representing the Commonwealth of Kentucky, recommended to the Sinking Fund Commissioners the transfer but doubted their power, under the act, unless they had an enabling act, which they drew, or General Cammack drew, and which was offered to the legislature during its closing days. Minutes of the Board of Education, dated Sept. 18, 1929, and resolutions received in evidence and marked for identification "Defendants' Exhibit No. 19." Board of Education minutes of Sept. 18, 1929, received in evidence and marked for identification "Plaintiff's Exhibit 160."

Plaintiff's objection having been sustained, the following was offered by defendant as an avowal:

"After our conferences with the State Board of Education and the Sinking Fund Commissioners with reference to the exchange of their T. P. C.'s for Banco-Kentucky, they took the position that they needed an enabling act to sell Trustees' Participation Certificates

T. K. Helm—Direct

and reinvest in Banco Kentucky because it was a new, distinct corporation. As late as March, 1930, they gave their hearty endorsement to the wisdom of investing in Banco and so made recommendations to the legislature in the form of a resolution. Said resolution was marked for identification 'Defendant's Exhibit No. 20.' "

When we discussed this matter of the plan of the acquisition by Banco of more than a majority of the stock of the Louisville Trust Company and National Bank of Kentucky with the State officials they were acquainted with the fact that the plan for the organization of the Banco Kentucky Company contemplated and was contingent upon the acquisition by Banco of more than 50% of the issued and outstanding stock of the Louisville Trust Company and National Bank of Kentucky. I don't know about the members of the Sinking Fund but the members of the School Board and the Attorney General and the Attorney General's Assistants were fully advised of that fact.

With reference to the acquisition of a majority of the stock of those institutions by Banco, the Attorney General made the statement to me in the Board of Education that so long as the Trustees under the Trust Agreement of April 22, 1927, held the stock there was no infringement upon a clause of the Kentucky Statutes that said no person directly or indirectly should own more than a majority of the stock of a Kentucky bank. When Banco acquired the Trustees' Participation Certificates, it was contemplated, at one time, that the National Bank of Kentucky would denationalize and would merge with the Louisville Trust Company, which would result in superseding the Trust Agreement of April 22, 1927, but I raised the question as to whether or not it would not be wise to repeal that section of the Statute that said no person directly or indirectly

T. K. Helm—Direct

could own more than a majority of the stock in the State bank or trust company. I discussed it with O. S. Denny, Banking Commissioner, and he and I discussed it with the Attorney General. The conclusion was reached that that old statute had been designed for a different purpose—

May I say what was actually done? The Attorney General's advice was that he could only proceed to rectify that condition by a quo warranto proceeding, and that he would only act upon the complaint of the Banking Commissioner and that the only penalty would be to stop paying dividends on the excess.

Immediately after the plan of organization of Banco became effective, control of Banco was lodged in the Trustees' Participation Certificate holders up until the time outsiders bought the stock, which was later. . . . The Trustees' Participation Certificate holders had the majority when they first organized and I expect continued to have throughout.

With respect to any agreement, or anything being done by the group that organized Banco, restricting its stock to the owners of T.P.C.'s after it was issued, there was no limitation on the ordinary right of stockholders that bought Banco stock, by exchange or by purchase. There was no voting trust and no effort whatever to control the free, untrammelled action of the stockholders in Banco Kentucky Company. After the election of the first Board of Directors, there was absolutely no plan, arrangement, or agreement that secured to the former owners of T.P.C.'s a continuing control over the policies and business of Banco Kentucky Company.

The reason Banco's charter was amended and its authorized capital stock increased from 2,000,000 to 5,000,000 shares was because we had received an unexpectedly large portion of Trustees' Participation Certificates and the Company did not have the free working capital that had

T. K. Helm—Direct

been contemplated. The plans of Banco called for a free capital of somewhere between twenty million dollars and thirty million dollars and that being discovered before the break in the market, steps were taken to increase the capitalization and that job was delegated to Mr. A. J. Carroll and myself. We had the stockholders waive their preemptive right to subscribe for more stock, and we did, lawfully and legally, increase its capital at a meeting held in January, 1930, as appears in the minute book of the Banco-Kentucky Company.

I don't recall about the stock being put on the market and attempted to be sold, until they made the trade with Rogers Caldwell, but they may have put some on—they must have, because they had more stock sold than their original capital, as I recall it.

The reason for the fluctuation in deposits in the National Bank of Kentucky, during the period between 1927 and November, 1930, was told by the Cashier and by the President and it was explained, when the question came up, that there would be a fluctuation of some, say, about \$45,000,000 down to \$35,000,000 in a period of time, and the explanation was about three-fold or four-fold. One was that some of our large depositors were sending money to New York to meet interest on bonds; another was that the country banks were seasonally withdrawing; another was that some of the large depositors were making broker's loans; another was that the National Bank of Kentucky was one of the few banks in Louisville that was not paying interest on general deposits, as high, sometimes, as $3\frac{1}{2}$ to $4\frac{1}{2}$ per cent. Those were the reasons as reported to us, and they did fluctuate. If the L. & N. had to meet interest on its bonds, they took out a real substantial sum of money and if someone else was reorganizing and needed money, then large amounts went out from those large deposits. Seasonally

T. K. Helm—Direct

the country banks fluctuated like the mischief—country banks would fluctuate from \$10,000,000 down to \$7,000,000 in a week or two. The National Bank of Kentucky had the largest number of country banks in Louisville and it had a substantial part of their general business.

I never heard discussed at any time any arrangement, agreement or understanding on the part of the officers or directors of the Banco Kentucky Company which required the Board of Directors to declare or pay in dividends the amount of money received by Banco on account of the money paid on the Trustees' Participation Certificates held by it.

The reason that during the existence of Banco, the dividends declared to its stockholders were equivalent to the dividends on the T.P.C.'s held by it was that Banco Kentucky had some dividends from the acquired banks in Cincinnati and other places and also had interest on its deposits. How they arrived at the dividends to be paid, I simply cannot recall. It was probably a matter of policy, because we had a paid-in surplus of 150% to carry on at the same rate that people had been receiving on the Trustees' Participation Certificates, but I can't tell you the details from memory now; it has been too long ago.

I know the dividends declared by the National Bank of Kentucky, from 1927 through October, 1930, were reported to the Comptroller in pursuance to a federal statute relating to National banks. I know they were reported, and I never heard, while I was on that Board, any criticism, but, as a matter of fact, there were reports to the Bank. I have seen copies of the reports since the close of the Bank.

After I exchanged a portion of the T.P.C.'s I held for Banco stock—I acquired 600 shares of Banco by reason of the exchange. When I went off the Board of Directors of the National Bank of Kentucky, I turned in those ten

T. K. Helm—Cross

shares and received 200 shares more of Banco, making a total of 800 shares. In addition to that, during the time I was a director, I owned stock in the Louisville Trust Company, till the day it closed. I never sold any Banco stock or Louisville Trust Company stock. I had all of the stock that I had ever acquired at the time the bank closed.

(Cross-examination by Mr. Marx)

My full name is Thomas Kennedy Helm, but as a rule I sign either T. K. Helm or T. Kennedy Helm.

I was a director of the Louisville Trust Company from January, 1911, until it closed. Until its unification with the National Bank of Kentucky in April, 1927, I never owned any stock in the National Bank of Kentucky.

I have been general counsel for the Kentucky Bankers' Association since 1906. I was thoroughly familiar with the fact that both National Bank stock and stock in Kentucky banking institutions is subject to double liability.

My recollection is that we authorized our name to be listed in alphabetical order in the letter of July 19, 1929, which was addressed to the holders of participating shares of the Bank and Trust Company. I ratified this letter and had seen it before it was printed in this form. I authorized my signature to be printed on it.

I personally signed Plf's Ex. No: 8, the document dated July 12, 1929, which requests the Trustees, under the Trust Agreement of April 22, 1927, to cause to be organized the Banco Kentucky Company, under the charter approved by us and thereto attached. This is a request that was required under the Trust Agreement from the Advisory Committee to the Trustees.

On July 12, 1929, I was a director of the Louisville Trust Company and of the National Bank of Kentucky. I worked

T. K. Helm—Cross

with Judge Humphrey in drawing the Trust Agreement. I was also a member of the Advisory Committee to the Trustees. At that time I also owned thirty Trustees' Participation Certificates and ten shares of stock in the National Bank of Kentucky, and ten shares in the Louisville Trust Company. As a director in each institution I had qualifying shares and in addition Trustees' certificates. After the organization of BancoKentucky Company I became a director in that company. I transferred my Trustees' Participation certificates for Banco stock and did not subscribe for any additional stock.

I signed Plf's Ex. No. 162, dated August 7, 1928. Said paper was received in evidence and marked for identification "Plaintiff's Exhibit No. 162."

At the time I signed Exhibit No. 162 I thought I knew all about BancoKentucky's organization and the details by which it was to be carried out, and that this was one of the forms to be signed, and I signed it when they poked it at me. I did not help to draft this particular deposit of the stock, nor the subscription. I don't recall having had anything to do with either one of them except they asked me to sign this deposit and I signed it. I haven't the remotest idea who drafted it. I couldn't tell whether Mr. Carroll drafted it.

I notice that attached to the letter of July 19th or enclosed with it, was this form which I signed, plaintiff's exhibit No. 162. On a perforated slip at the bottom was an additional form to be signed if a person subscribed for more stock. I probably saw them at the time but I do not now recall anything about who drew them. I did see this letter in the making, and I do know this letter was tinkered with or changed around like a mosaic for a while and it was approved in this final form, and I imagine that printed copy is exactly like this one appearing in the minute book, but I haven't compared them.

T. K. Helm—Cross

The "Participation Shares of the National Bank of Kentucky and the Louisville Trust Company" are what we have called Trustees' Participation Certificates.

I was one of the co-authors with Judge Humphrey of the Trust Agreement of April 22, 1927.

192—At the time you drew that agreement there was a discussion of the question of double liability, wasn't there?

A.—That will be found in all the forms, and was put in this particular draft—which, by the way, was adopted by Thompson in his book on corporations, as a standard form—the question of double liability on the trustees—of course, they are limited to the extent of the estate in their hand, but it is conceivable, when you acquire two banks and had the right to acquire other interests in banks, that there might be a double liability and that there might be liability on the Trustees or their estates to pay it, and it was thought best, as had been done in all similar drafts of similar documents, to provide that the Trustees should not be liable but the liability would attach to those persons who deposited their stock with the Trustees, and that is expressly what is provided for in this agreement.

193—So that was discussed between you and Judge Humphrey?

A.—I can't remember any discussion of it. I drew the first draft, based on those documents I mentioned before, and submitted it to Judge Humphrey. He went over it and called me to his office and made some corrections, and then took it up with the committee of the Louisville Trust Company, and the committee of the National Bank of Kentucky, and they made some suggestions, and in the final analysis I had it copied and submitted it to Judge Humphrey. He O.K.'d it; the committees O.K.'d it and the Boards O.K.'d it.

T. K. Helm—Cross

194—So that everybody concerned knew that the persons who deposited their bank stock with the six trustees were agreeing, by the act of deposit and their acceptance of the Trust Agreement, to respond to any double liability which might be imposed upon the bank stock deposited with the trustees?

A.—The agreement speaks for itself. Everybody signed the agreement or a counterpart thereof.

195—So a holder of stock in the Louisville Trust Company, which was bank stock—it had double liability on it before the trust?

A.—Within a certain time limit.

196—So did the National Bank of Kentucky.

A.—Within a certain time limit, yes.

197—So when a holder of one or both deposited with the Trustees that bank stock certificate and got back Trustees' Participation Certificates, he did not get back a piece of paper which was not subject to double liability, but a piece of paper which bore the same liability as his bank stock?

A.—Judge Marx, I submit I have answered that question.

198—That is the fact?

A.—That is the fact.

199—But when you signed Exhibit No. 162, you say: "I hereby deposit . . . 300 Participation Shares of the National Bank of Kentucky and the Louisville Trust Company" which—I am interjecting in this question, was subject to double liability—and you then said, "In exchange for which you are to cause to be issued to me two shares of stock of the Banco Kentucky Company for each Participation Share herewith deposited, fully paid and non-assessable," didn't you?

A.—Yes. Non-assessable in that sense means it was fully paid stock, not only on the basis of par, but on the basis of the exchange, with 150 per cent surplus. Non-assessable

T. K. Helm—Cross

means there was nothing more to pay, and does not have a thing in the world to do with double liability.

200—You also knew that the personal property of the stockholders was to be, under Article 8, I think it is——

A.—(Interrupting.) That is right, in the Banco charter.

201—What page is that?

A.—I am perfectly familiar with Article 8.

202—That provides that the private property of the stockholders was not to be subject to any personal liability?

A.—I told you yesterday and I will repeat that that is in the standard forms of corporations and trust companies, in every one of them, verbatim, without the change of the crossing of a T or the dotting of an i; it is a form that is in every corporation charter I have seen in Kentucky. In ordinary commercial corporations, as distinguished from banks, there is no double liability, but there is a provision for you to say whether the private property of the stockholder shall be liable to assessment, and I have never seen one where they put in that the private property should be subject to any extent for the corporate debts.

203—You did know you were exchanging stock in which you were personally interested, and which was subject to double liability in the event an assessment was levied, for stock which you considered was not subjecting you to any personal liability, didn't you?

A.—Certainly, but I never thought about double liability in that connection.

204—Regardless of what you thought about it, you knew that to be so?

A.—I knew it as a question of law.

I never heard of the charter of the Guardian Detroit Union Group, Inc., unless you are talking about some decision that a bank holding company—where there was some provision injected by the Attorney General—I never heard

T. K. Helm—Cross

of it. I may have heard of the Guardian National Bank of Commerce of Detroit, Michigan. I didn't know anything about it. If I ever heard anything about the fact that that bank was a member of a group of banks, the stock of which was held by this Union Guardian Detroit Group, Inc., I have totally forgotten it. I don't remember a thing about it. I do not know that that corporation was organized under the mercantile laws of the State of Michigan, instead of having the provisions in Article 8 which we had, had Article 9; that stockholders should be subject to the same liability on the bank stock held by their corporation as they were liable prior to their exchange for the stock of the company.

I may have heard of the First National Bank of Detroit but I know absolutely nothing about its charter provisions or the laws of Michigan in regard to them.

213—Don't you know of the organization, under the general mercantile laws of Michigan, of the Detroit Bankers Company, a company which held the stock of various investment banking concerns, and the stock of banks, similar to the holdings of the BancoKentucky Company?

A.—When was that company organized?

214—Shortly after the formation of BancoKentucky.

A.—What effect could that have on what I was doing in Banco?

(After argument.)

The Court: The witness has stated he never heard of any corporation without this provision.

(After argument.)

The Court: I am sustaining the objection to the question and also to his statement, which, as I recall, was voluntary. Even if it is in there, it has no pertinence. Objection sustained to questioning on all matters pertaining to his statement, including his statement that he never heard of a cor-

T. K. Helm—Cross

poration that had a different provision; that is stricken from the record.

When we unified the two banks in 1927 I had absolutely no doubt whatever about their solvency. At that time the Comptroller of the Currency congratulated the Louisville Trust Company representatives about the unification. I was there in a dual capacity as attorney for both. Mr. Stites was there as the direct representative of the Louisville Trust Company and Mr. Dosker for the National Bank of Kentucky, and, because of Judge Humphrey's ill health, I was there for both parties.

With respect to the Trust Agreement, I was not under any compulsion to deposit my stock with the Trustees. There were people who did not deposit. I did deposit and assume whatever liability the statutes of the state and the United States imposed on stockholders of banks and trust companies.

I knew that the Louisville Trust Company was examined by the State Bank Examiner. It was a member of the Federal Reserve Bank. It was examined on behalf of the Federal Reserve Bank. In addition Humphrey Robinson and Company made an examination of the Louisville Trust Company. Under the law State Bank examinations could be made twice a year or oftener if they saw fit, but as a matter of practice they made them certainly once a year and sometimes twice a year. Humphrey Robinson examination of the Trust Company was made once a year.

I think I became a director of the National Bank of Kentucky June 3, 1927. I had known for many years that National banks are examined by National Bank Examiners at least twice a year or oftener. In addition that Bank was examined by Humphrey Robinson & Company once a year. I knew that. I knew that reports of the examinations of the respective institutions were filed in the respective insti-

T. K. Helm—Cross

tutions. I knew they were available to me for my examination and inspection, theoretically. I can't recall that a copy of the report of examination, made by the National Bank Examiner, was directed to me as a director.

In the National Bank of Kentucky those reports were presented to the whole board by Mr. Brown, as President, and he interpreted them as he went along, turning back and forth to different comments and explaining the figures and items. That was the way it was done at the National Bank of Kentucky for five years or more before we went on that Board, and it was explained to us that you could get more out of the report if someone familiar with the facts would read it. When those reports came in, whoever was present was asked to keep quiet and Mr. Brown said he would read the report and he did read the report and summary, turning the pages back and forth. He would be told to forget the fractions, that there was no use going down to the last penny on some of the items. He would comment on them very fully and I think the Directors, if any of them testify, will tell you it was very tedious and took about an hour and a half or two hours and a half to read them. He called us to order just like in court.

There was a report by sections and there was one section relating to slow and doubtful loans. Mr. Brown would read that line over and would say how much money had already been collected on some of the items, and give an explanation on some of the other items, where he thought the Examiner was in error in listing it in that category.

Plaintiff's Exhibit 15 is a printed form of the Treasury Department addressed to the Board of Directors and signed by John S. Wood, Chief National Bank Examiner, saying that, at the direction of the Comptroller he is enclosing a copy of an examination made on a certain date. These letters did not come to the individual Directors. They went

T. K. Helm—Cross

to the officers with the report. I never saw one of those letters.

I knew Mr. Brown had the reports of the Examiner, but I am making the point that there was no individual letter sent to a Director similar to the letter you have just shown me.

As a member of the Bar and counsel for the Bankers' Association for many years, I knew these reports were made for the information of the Directors. I never looked at these reports myself. I heard them read when I was present, either at the Louisville Trust Company or the National Bank of Kentucky. At the Louisville Trust Company when I was on the examining committee, I did look at these reports. I was on two, probably, in twenty odd years. In the National Bank of Kentucky I was present and heard examiner's reports read but I never looked at them.

With regard to the Kentucky Wagon Works, I knew that the Bank had invested in some claims and I knew that they did have an investment, and I was told at the time of the merger that they had charged off a certain amount. My recollection is, after the lapse of time, that we were told—I mean officially told—that the investment was about \$435,000, that it had been up to \$800,000 and that the balance had been charged off. The way I understood it approximately was that they had invested \$800,000, had charged off \$350,000 and were still carrying \$450,000.00. I did not know the Kentucky Wagon Works was not a profitable enterprise.

I knew that before the unification of the Bank and Trust Company that the Kentucky Wagon Company had been through some kind of reorganization. It had sold out to a National Motors, and they had issued bonds. I knew that the National Bank of Kentucky had bought, at 25¢ on the dollar, about one million dollars of claims against the prop-

T. K. Helm—Cross

erty so as to be in a position to control the property. I learned afterwards, when on the Board, that it had been operated by a receiver, the Wagon Company, and that they were waiting to perfect a title which was then delayed in litigation in the Federal Court, and that was not settled, I may say, until the latter part of December, 1927. I knew the National Bank of Kentucky was awfully anxious to sell it and get back what they had invested in it, with interest. I knew it was a problem.

258—I didn't ask you that—the biggest problem—to refresh your recollection, I will ask you if you were not asked this question in your testimony in the Akers case: "You think that fact was generally known to the business class of people in Louisville? A. I would say in a way that that was the biggest problem that National Bank of Kentucky had."

A.—Well, I will repeat that that was the biggest problem in a way, as far as I know. I knew they kept trying to sell the property to different people at different prices in order to recoup what they had in it.

I didn't know the Kentucky Wagon Works was carrying large overdrafts. I never heard of them.

260—Let me see if this refreshes your recollection, referring to the Kentucky Wagon Works: "Yes, that was the time Jim Hayes"—Who was Jim Hayes, Secretary?

A.—He was one of the Vice-Presidents.

261—Of the National Bank of Kentucky?

A.—Yes, and he acted as Secretary of the meetings of the Board of Directors.

262—"Was called on for the overdrafts and they showed \$48,000 to the Kentucky Wagon Manufacturing Company, and I would say the old directors, the directors who had been with the National Bank of Kentucky, chiefly took up the burden and jumped on him about that overdraft and he said he couldn't explain it."

T. K. Helm—Cross

A.—Yes, that is the fact; that is approximately what happened, and that was explained, as you will find in that testimony immediately after that, that they had an order at the Kentucky Wagon Company for a bill of goods they could not fill from their inventory and it was necessary to buy some additional material, and that this overdraft would be taken up as soon as the material on hand, plus the new material, could be manufactured and sold to the buyers. I did hear about that \$48,000 or \$35,000, whatever it was, but that was the only one.

I knew there was a brokerage concern in Louisville named Wakefield & Company. I never patronized it. I did know Mrs. Latta ran it. I did not know that the Greer, Meagher, Schweitzer, Wakefield and Harris loan was combined. I never identified them with Wakefield and Company in my life or with Mrs. Latta.

I knew when I was on the Board that the National Bank of Kentucky had acquired the Kentucky Wagon Manufacturing Company and was actually operating it. The Bank organized the Kentucky Manufacturing Company of Delaware for the very purpose of acquiring this outstanding interest in the inventory and real estate, in order to salvage the debt previously contracted, plus the investment in buying up claims of other people at 25¢ on the dollar.

With reference to my direct testimony, that Banco was to help reorganize the business done by the Bank in carrying on of an insurance department, bond department, travel department and such detail that had become burdensome to the bank, I think both the Trust Company and the Bank had a bond department. Banco was going to assist in supplying bonds, underwriting bonds, and what I had reference to there is these banks running an insurance department, such as you will find in the case of *Botts v. Ranny* in the Court of Appeals of Kentucky—he was President of the

T. K. Helm—Cross

Fidelity and Columbia Trust Company—they had a travel department. There were a great many of these so-called services that banks were rendering that Mr. Bean was referring to in that testimony I heard read this morning, that banks would have been glad to have taken out of their routine, and Banco was going to take over such departments as that, to relieve the banks of the insurance departments, travel departments and things like that. I can't recollect whether the Trust Company and the Bank had a travel department. Most of them do, I will say that. These so-called services, you would say, were unloaded on Banco.

Actually Banco did not take over these functions. Banco never got started to amount to anything because the break in the market came before it could get organized. Banco did not have an insurance department, a bond department, or a travel department, or a statistics department, or a trust department. It never got started on any of these departments. I never heard of any investment department—and no underwriting of bond issues. They never did any underwriting of bond issues. It never got started.

It did get started acquiring banks, and acquired about eleven of them. Before it had a dollar in its treasury, it started negotiations with banks, at least, they were reported. I didn't sit in on those negotiations, but negotiations were reported to the organizers of Banco as having taken place with banks in Cincinnati, Dayton, Ohio, Paducah, Louisville, and I don't know how many places—I think one in West Virginia. They did discuss Banco and its general outline informally, and there was no commitment that I know of until it is shown in the minutes where there would be a proposition received and accepted, but it was talked, I would say yes, they had that much negotiations.

I do not know whether they made any trade for these banks before the plan outlined in the July 19, 1929, letter

T. K. Helm—Cross

was declared effective or before they had received any money. But I do know there was lots of talk as to what Banco would do or buy, but I never heard of any contract being made with anyone until after Banco was declared operative. September 11, 1929, was before the plan was declared effective and before any money was called for. Banco had been organized on July 16th and there had been a great many Trustees' Participation Certificates exchanged prior to this date, is my recollection. I think the first money was called to be paid the 1st of October.

My attention is called to the fact that the September 11th, 1929, minutes say "The President then discussed negotiations with Cincinnati Banks . . . whereupon, it was moved, seconded and carried, that the President be authorized to proceed in his discretion, with the matter of the Cincinnati Banks and the sale of stock—reporting to the Board the proposition tendered." I still say that was in the negotiations stage. The President was authorized, on the basis of that report, to proceed with negotiations. I think you will later find a resolution where he was authorized to close at a certain amount. My recollection is that the amount was \$7,500,000, something like that. I imagine that cost us, in money and stock, about \$7,000,000. That is my best recollection, but I am not going to tie myself to figures. You will find in those minutes, which are filed, when the President reported what it did take in stock or money to buy those banks, and where that sale was then approved or the purchase of them authorized. Speaking about the things actually done—I think that was one of the first important things they did, except collecting the money from the subscribers.


Banco was to have its own mortgage department under Mr. Fleece; he was picked out and consulted about that. The banks had mortgage departments. You would not

T. K. Helm—Cross

call them—they had mortgage departments, but they hadn't a title plant and lawyers specializing in titles. They employed different examiners to pass on mortgages that had been approved by their executive committee, and a certain amount of definite property, and they had forms on which those mortgages were prepared both in the coupon form and note form, there was a great demand for them in trust estates and from customers of banks all over this territory.

I remember in the Akers case, when I was asked what the original plan in reference to the organization of Banco was, saying: "It was to have a business department to take over from the bank certain departments, such as foreign travel, and the bond department and mortgage department and other special features that had been introduced into the banking business." That is what I have just said. We selected Mr. Fleece to head that department, and as I told you, I was the one that called him into negotiations and he resigned as President of the Bankers Trust Company, about the first of August or the 1st of September, 1929, but he was in consultation long before he resigned. Nothing came of it except that I had to go on his notes and pay them. I presume I did not have to, but I did it as an accommodation. He signed and I signed as surety.

BancoKentucky Company never paid him any money. I never heard of them paying him any money. Neither the Directors of BancoKentucky Company, nor the officers of that company in an official capacity employed him for BancoKentucky Company. They merely negotiated with him and took his advice, that is all. That advice was given in contemplation of being head of a large Department. Mr. Fleece died about a year ago. When talking about this Department that was a preliminary negotiation. It materialized to the fact where he resigned the presidency of the Bankers Trust Company and consulted with the officers.



T. K. Helm—Cross

and directors of the Banco Kentucky Company. His resignation was prompted by his hope or expectation that he would get a job.

Immediately following my answer to the question in the Directors' Case, which was just read me, I said that the purpose was to acquire a chain of banks in the Ohio Valley and banks in West Virginia, Ashland, Cincinnati, Dayton, Covington, Indianapolis, Louisville, Paducah and some place in Arkansas, or Missouri. I don't know whether the word "chain" of banks is a technical term, or whether you would rather say, a group of banks; but there was individual banks, in which each was to be owned by Banco and to act as a reservoir of credit.

The purpose was to own a substantial interest in banks, and in the Louisville Banks, the National Bank of Kentucky and Louisville Trust Company, a controlling interest. I expect they were going to own a controlling interest in the Security Bank of Louisville. I think they wanted a controlling interest—possibly two-thirds, in most banks because you know under most laws it takes 2/3rds to amend the charter and to do certain other things in regard to the bank. A majority interest, is enough to elect the officers and direct the policy. It was our purpose to always get at least 66 2/3% interest in every bank that went into it. My recollection is I did say that, and I think that is the wise thing to do when you are trying to own a bank.

With reference to the use of this word "chain" as my own expression of what they were organized to do, as I described it in the Akers case, I may have used the word "chain" banking in that testimony, but the purpose was to acquire an interest in a group of banks in the Ohio Valley and to let them withdraw from the Federal Reserve System and depend on Banco and do their own financing. It was figured that would save a tremendous amount of

T. K. Helm—Cross

money to the banks that had to own stock in the Federal Reserve and keep large deposits in the Federal Reserve.

In the Akers case I said "It was to acquire a chain of banks in the Ohio Valley and banks in West Virginia, and Ashland, and Cincinnati, Dayton, and Covington, Indianapolis, Louisville, Paducah, and some place in Arkansas or Missouri, I have forgotten which place it was. They had a beautiful picture drawn of unification of banks where there were seasonal demands for an excess of cash, and this institution, the BancoKentucky Company, would supply and lend to the customers of the banks. The Banco-Kentucky Company——" That is right.

I said "it was to start with a 50 per cent ownership in the National Bank of Kentucky and the Louisville Trust Company, and eventually it would have between \$20,000,000 and \$25,000,000 assets to carry on its other functions including that of acquiring other banks or an interest in them. The plan you have seen frequently discussed as a development of chain banking throughout the country and by the greater banks in New York City."

I understood quite definitely in the beginning that its purpose was to have what I called a chain of banks, but I am not giving a definition of what you mean by group banks or chain banks, but I do know that you will find, probably, in my testimony and that of others, that in some respects Banco was to be a trading company, in some respects a finance company, and in some respects a holding company. I didn't mean to stress that it was any one to the exclusion of the other; it was doing a great many different things.

It was contemplated that BancoKentucky Company would engage in a more hazardous business than banks, state and national, were permitted to do under the banking laws. Banco could buy stock in corporations and a bank

T. K. Helm—Cross

cannot. They could underwrite, and they could guarantee—now, there is a very limited extent to which a bank can guarantee, except when it is selling its own paper or the paper of others to other banks, but this was to be a broad guarantee. The National Bank of Kentucky could not buy the stock of the Security Bank of Louisville. A National Bank cannot buy bank stock; it can absorb it as a branch.

334—But you were undertaking, by having the National Bank of Kentucky organize this Banco Kentucky Company, to do in that way what the bank could not do directly, were you not?

A.—I was not having the National Bank of Kentucky organize Banco. It was the outgrowth of consultation with the Louisville Trust Company Directors and the Directors of the Louisville National Bank & Trust Company which had unified with the—merged with the Louisville Trust Company, and in discussion with various large borrowers and brokers and others in Louisville as to the necessity in this locality of a bigger unit.

335—We understand that now, but I am directing your attention—you say the National Bank of Kentucky didn't—wasn't the one that initiated by formal resolution its Board of Directors and directed its President to cause this company to be organized—

Mr. VanWinkle (Interrupting): He is now asking for a resolution of the Board of Directors; if he is going to ask him about that, I will ask that he show it to the witness.

The Witness: I don't have to see it; I know that the first resolution adopted after all these discussions—I told you I attended seventeen meetings of people interested in organizing Banco—probably the first resolution appearing in a minute book was the one in which the plan was elaborated and the Board of Directors of the National Bank of Kentucky authorized its President to proceed along the

T. K. Helm—Cross

lines that had been developed and discussed in all these group meetings.

336—Nobody attended these group meetings you spoke of except officers and directors of either the Louisville Trust Company or the National Bank of Kentucky, or large stockholders in those two banks, did they?

A.—That is my recollection; I can't say definitely.

337—There is no doubt that this plan was originated by the officers and directors and stockholders of the Louisville Trust Company and National Bank of Kentucky?

A.—That is my opinion.

338—And they undertook by this means to get control of bank stocks that they could not purchase directly—in the Louisville Trust Company, by reason of state laws; and in the National Bank of Kentucky, by reason of the national bank laws?

A.—You are repeating your question, and I am going to repeat my answer: Banco was an absolutely distinct and third corporation, organized with broad powers to do things beyond the powers of state banks and trust companies or national banks. It was supposed to be and intended to be a corporation with large cash resources, larger than the capital and surplus of any one of the banks. It was to seasonably help move borrowers from one bank to the other, and like a note broker, to scatter loans. "By scatter loans" I mean an apportionment of the loans among the banks.

If a customer in Louisville that had heretofore had to go to Chicago, New York or Philadelphia for his financial requirements, came to Banco, it would have alliances by which, like a note broker, it could endorse that paper and send it to banks that needed endorsement security.

341—You intended through the medium of Banco to make loans in larger amounts than were permitted to any individual bank?

T. K. Helm—Cross

A.—Absolutely, yes.

342. Didn't you also contemplate, right at the beginning, that BancoKentucky Company was to serve as a little Federal Reserve Bank for the banks that it controlled?

A.—I have stated that it was the intention of saving a great deal of money for these banks that was tied up in stock of the Federal Reserve and in the legal requirements of the Federal Reserve, so that BancoKentucky would have cash sufficient to accommodate its associate banks when they needed money, and they could keep their deposits with Banco instead of keeping it with the Federal Reserve. In other words, they would keep the money at home.

343—You know that a National Bank, by Federal Law, was required to keep a certain percentage of its deposits in the Federal Reserve Bank and to own stock in it, too, and that was true of the Louisville Trust Company?

A.—As long as they were a member of the Federal Reserve they had to own stock and keep deposits there.

344—Did you ever make application for the Louisville Trust Company to go out of the Federal Reserve System?

A.—No; I did not.

345—Did you ever make application for any one of the eleven banks that formed the BancoKentucky Company chain to go out of the Federal Reserve System?

A.—Banco never got a good start. The market broke—

346 (Interrupting)—Just answer that question.

A.—No, they didn't.

Mr. Marx: I think it would shorten it if he would just say yes or no.

Mr. Van Winkle: Answer it and then explain.

The Court: He has answered it; he said they didn't.

The Witness: There might be an exception; they did start to denationalize the National Bank of Kentucky.

347—They started to denationalize the National Bank of Kentucky before the stock market break in October, 1929?

T. K. Helm—Cross

A.—Yes.

348—And they applied for and they took out a state charter for a state bank, didn't they?

A.—Mr. Vaughan obtained that for the National Bank of Kentucky.

349—Now, the new state bank which was going to take over the National Bank after denationalization, did it apply for entry into the Federal Reserve System?

A.—I knew it had to if it wanted—

350 (Interrupting)—I didn't ask you that; I asked you if it did.

A.—I understand it did.

351—You say "It had to": Isn't it a fact that a state bank does not have to belong to the Federal Reserve System?

A.—That is true.

352—A state bank is required, however, to have the same reserves as a national bank?

A.—If it is a member of the Federal Reserve.

353—Regardless of whether it is a member of the Federal Reserve?

A.—Under the laws of Kentucky, the reserves are kept the same in a state bank, the same as in a national bank.

354—That is the amount of the reserve?

A.—The amount of the reserve is kept on a parity.

355—But the state bank has an option, has it not, of keeping its reserve with some other state bank, or keeping it at the Federal Reserve, or keeping it in cash in its vault?

A.—That is true as to state banks.

356—This new state bank that you organized to take over the National Bank of Kentucky did not avail itself of the option to keep its reserves in a state institution, but immediately applied for admission into the Federal Reserve System?

T. K. Helm—Cross.

A.—That is my understanding. I didn't do it, I may have signed something that was necessary for stockholders to sign.

Since I was serving on three boards of directors it was very difficult for me to distinguish what I did at one and what I did at the other. I so testified in the record you are reading from. It was difficult for me to distinguish between what I did at the Louisville Trust Company, what I did at the meeting of Banco Kentucky Company and what I did at a meeting of the National Bank of Kentucky. What I meant by that was that it was difficult for me to recollect which particular event happened in which Board, what I heard in one Board, and what I heard in a different Board.

I wrote that letter on April 30th regarding services with respect to the Kentucky Board of Education's Trustees' Certificates and sent this bill to Mr. Jones as Vice-President of the National Bank of Kentucky and asked him to see whether it was due from the Bank of Kentucky or the Trustees or from Banco. I said I do not know whether this should be charged to the Banco Kentucky Company or the Bank of Kentucky or the Trustees.

Said letter and bill were received in evidence and marked for identification "Plaintiff's Exhibit 163."

If I ever charged for trying to get Kentucky Statute 581 changed, I have forgot it. When we organized Banco and contemplated that it was going to have more than 66 $\frac{2}{3}$ per cent of the stock of the Louisville Trust Company and National Bank of Kentucky, of course, we knew of Section 581 of the Kentucky Statutes, which prohibits any person directly or indirectly from holding or owning more than half of the capital stock of a bank. I knew of that provision and I discussed it with General Cammack and O. S. Denny, Banking Commissioner. I wrote that letter addressed to Mr. James B. Brown or Mr. Charles F. Jones.

T. K. Helm—Cross

In it I said, "It would certainly be much safer if the above law could be repealed in the interest of chain banking." I may have used "chain banking" in the current use at that time. I still am not able to define it, except where one bank or company owns an interest in several banks it is, in my opinion, chain banking. This is a letter that I wrote. I doubt very much if I ever made any charge for it. I was calling attention to the fact that I thought they ought to have a two-thirds interest, instead of just a majority interest, when they acquired an interest in banks. I was also referring in that letter to the fact, that had been discussed then, that they might denationalize the National Bank of Kentucky and merge the National Bank of Kentucky and the Louisville Trust Company into one institution, which would dispense with the Trustees under the Trust Agreement of April 22, 1927. That was referred to in that letter, as I recall it.

In that letter I said, "The only plausible excuse we have at the present time for the Banco Kentucky Company owning such a large per cent of the Trustees' Certificates is that Banco Kentucky Company is not 'directly or indirectly' owning more than one-half of the capital stock of other institutions, and, furthermore, counting upon the non-action by the State Banking Commissioner or Attorney General to enforce this provision." That is only a part of that letter. This letter, without reading it in full into the record, refers to the fact that the six Trustees appear of record as the holders of the stock, and that had been ruled upon as not being in violation of this section. This is the same thing that applies in the Citizens Union and the Fidelity & Columbia, and the same thing in the First National Bank and Kentucky Title Company.

It is the same thing that was done on the recommendation of the Banking Commissioners in regard to the Louis-

T. K. Helm—Cross

ville Title Company ownership of the Title Guaranty Trust Company—by trustees. Now, then, it was contemplated as this letter shows, and as I recall it—here it is: “The question suggested becomes doubly important when, as and if, the National Bank of Kentucky denationalizès into the Bank of Kentucky, a state corporation,” and then it merged with the Louisville Trust Company, which would dispense with the necessity for the six Trustees. I told Mr. Brown and Mr. Jones it was a very serious thing if they denationalized the National Bank of Kentucky and merged with the Louisville Trust Company and dispensed with the Trustees.

Now, what I have said in the presence of General Cammack—was that the Banking Commissioner had this matter up in connection with the Louisville Title Company. That brought it sharply to my attention and occasioned me to volunteer this letter. The Banking Commissioner is the only one who would regulate the Louisville Trust Company in this regard, and the Attorney General, by quo warranto, is the only one who can enforce the disposition of the excess of stock by suspending dividends on the stock held in excess of that provided in this section of the Statute. Therefore, I thought it was wise to have that section—that special provision repealed. In certain contingencies I was fearful competitors would raise the question, too.

I wrote the letter, marked “Plaintiff’s Exhibit 164” on February 14, 1930, marked “Important” and sent by messenger to Mr. Charles F. Jones, Vice-President of the National Bank of Kentucky—it says “Bank of Kentucky” but I meant National Bank of Kentucky. It refers to about three different topics, more or less connected with legislation or with the action of the State Board of Education in regard to their transferring of Trustees’ Participation Certificates for Banco Kentucky stock. The latter part of

T. K. Helm—Cross

the letter refers to my strong recommendation that the section of the statutes we have been discussing should be repealed, referring to the fact that there was a legislative jam and a good deal of feeling in the Legislature, and while the Banking Commissioner was favorably disposed, the Attorney General was disposed to keep a hands off policy.

I say here the Jurisprudence Committee of the Kentucky Bankers' Association had adopted a hands off policy because some of the members of the committee had other irons in the fire and did not want to complicate the legislative situation. In this letter I said, "The suggested way for enforcing this law is to deny voting power to the person owning more than a majority of the stock, and to suspend dividends thereon until the excess stock is disposed of, and there may be other remedies, and it does not take much argument to see how seriously such a threat, if instigated by competitors, would be to the Banco Kentucky Company." That was quoting or paraphrasing what the Banking Commissioner and the Attorney General said would be the remedy when, as and if, they got ready to enforce it.

I said the only remedy was to bring a quo warranto proceeding by the Attorney General against the recalcitrant bank. The Banking Commissioner was not disposed to make a complaint and the Attorney General was not disposed to bring a quo warranto proceeding. All of them knew Banco was holding more than 50 per cent of the Louisville Trust Company. It had no application to the National Bank of Kentucky. Banco was holding more than 50 per cent of the Security Bank. It acquired that later. I don't know whether it was before or after this letter. The Ashland Bank was a national bank. This law does not apply to national banks and does not apply, so far as I could find out, in any other state. The Mechanics Trust Company of Paducah was a state bank. We owned more than 50 per

T. K. Helm—Cross

cent of that. We got that just before the close after this letter was written. The Newport and Covington, Kentucky, banks were both state banks. We owned more than 50 per cent of the stock of those banks. We were counting on non-action by the State Banking Commissioner and the Attorney General to enforce this provision. I had already said the Banking Commissioner was favorably disposed to this company, this holding.

I thought Banco should acquire two-thirds of the bank and I knew of this provision of the Statute and I discussed it with the Attorney General and Banking Commissioner. I thought if we could get the cooperation of the Jurisprudence Committee of the Kentucky Bankers' Association, it would be the wise thing to repeal this provision; I was disturbed about it.

The BancoKentucky Company was not violating the law itself, and under its charter it could hold any amount of stock. It was not violating the law as to the National Bank of Kentucky or any national bank, but the Banking Commissioner could insist that a state bank—under that section compel the stockholder to reduce his holdings to fifty per cent or less.

I advised the officers and directors of BancoKentucky Company that in my opinion as a lawyer, insofar as their ownership of more than 50 per cent of the state banks was concerned, the Statute says "nor shall any person, directly or indirectly, hold or own more than one-half of the capital stock of a state banking corporation." I didn't pay any attention, when it says "person" that it didn't apply to a corporation—it says "any person." I did not advise them that in my opinion Banco was not a person. I paid no attention to it.

I advised the officers and directors of the BancoKentucky Company that this was a violation of the law and that,

T. K. Helm—Cross

therefore, they ought to make every effort to get the law repealed. But there was no penalty except to compel them to reduce their holdings. I said in the letter that an additional penalty was to stop them from voting the stock until they disgorged any in excess of fifty per cent. Another penalty was to stop dividends until they disposed of the excess above 50 per cent. There is no penalty on the stock holder except that. There is no jail or fine. It is an indirect action.

Preemptive rights of Banco stockholders were abolished by the amendment of January 14, 1930. As set out in the minutes of the Banco Kentucky stockholders meeting, a reason for abolishing the preemptive rights was that the stock was selling at a considerable premium above \$25 per share on the Chicago Stock Exchange and the Company wanted to sell its stock to diversified people and did not want its own stockholders taking preemptive right to buy and turning right around and selling it in the market. There would have been rights if this had not been repealed. I presume that in offering rights to subscribe to stockholders we could have fixed the price at which they would have been permitted to subscribe, but that is still debatable in Kentucky. We did fix the price when we organized Banco at \$25 per share; the par was \$10 and the trading price was fixed at \$25.

At the time this amendment to the charter was designed I am very confident Banco was selling above \$25 a share, but at the time the statutory meeting was held, I don't know what the price was. This was done on January 14, 1930. The stock was selling at $21\frac{7}{8}$ ths. The day before it had been \$22. At the time these notices were put out it was much higher. You have the high, low and closing prices here, and it varied from day to day. I don't recall what day the notices were put out, but this stock had been up as high as

T. K. Helm—Cross

30-33½. It was decided by the Board to do this thing before December. There had been action taken long before January 14, 1930. The first action was taken on the amendment December 27, 1929. Apparently at no time in the month of December was the stock above 22 or 23, but it had been as high as 33. At no time during the month of November was the stock over approximately 25. Whatever the exhibit shows is correct.

Statement by the Chicago Stock Exchange, showing transactions in BancoKentucky Company stock from October 1, 1929, to January 8, 1931, received in evidence and marked "Plaintiff's Exhibit No. 165."

I would have to see the books to see if we sold any of the additional shares exempted from the preemptive rights of stockholders. This is the Stock Register. I had an idea we had sold more than 2,000,000, but the books are the best evidence. We were authorized to sell 2,000,000 and I think we went above it in sales.

The reason we wanted to get the stockholders' preemptive rights exempted, or one of the reasons, was that we intended to exchange BancoKentucky stock for more bank stock, or maybe for Caldwell & Company. Caldwell & Company was in contemplation in December or January—not that particular trade, but something similar to that, in the development of the company. In their chronological order at that time, we did not have in contemplation that we wanted to exchange BancoKentucky Company stock for more bank stock. We wanted to sell more stock for cash, to develop its development.

419—You never did sell any more?

A.—You heard about the break in the stock market?

420—The break was before this?

A.—We had decided about this amendment to it even before the stock market break.

T. K. Helm—Cross

421—But the time you did it—the first record of it was December 27th, and action was taken January 14th, and the stock market break had occurred in the previous October?

A.—October 27th or 28th, and then again in November. You couldn't sell anything. The Supreme Court recognizes that as an established fact, known to all men.

422—With that condition staring you in the face, you authorized an issue of 3,000,000 additional shares?

A.—Yes, that was to sell that stock when we could. We thought——

I don't know whether we ever did offer it for sale. I think they did sell more than 2,000,000 shares. Regarding sales of Banco to the public in a public offering, Caldwell & Company was to sell the stock they got and put it back in their company. We had a half interest in Caldwell, or thought we had, or would have. I don't know whether Caldwell sold any or not. I heard this man from his office testify that they sold some, but not a great deal.

I was at all times a director of Banco. I don't recall any resolution of the Directors authorizing the offering of any of these 3,000,000 shares for sale to the public, but that was the purpose of the amendment, obviously.

It may have been that one of the purposes of issuing this 3,000,000 shares free from stockholders' preemptive rights was in order that we could exchange it for bank stock. It may be that they were going to buy more banks. We had discussed other banks. After that, I think they bought the banks in Paducah and maybe in Ashland and the Security Bank in Louisville and paid for it partly by stock. Sometimes it would be done by the exchange of Banco stock for bank stock, like in the Security Bank, partly stock and partly cash. In the Paducah banks, my recollection is that it was all swapping stock.

T. K. Helm—Cross

Whatever the minutes show, the contract with the Nation Bank of Paducah to have been, is what we did. I can't remember the thousands of shares traded on these different banks. It is my recollection that we purchased the Ashland Bank altogether by the exchange of Banco stock for stock of the Ashland Bank. There may have been some cash paid. There was \$37.50 paid. My recollection is that the Mechanics' Bank at Paducah was purchased altogether by an exchange of Banco stock for the stock of that bank. If that is what the record shows, we traded 29,294 shares of Banco and \$217,000 in cash for 2,713 out of 3,000 shares of that bank's stock.

That increased the capital of Banco for the purpose of carrying on its general functions, and they expected to use that stock at \$25 a share for sale or exchange for stock of banks or Caldwell & Company or to sell it and create what they had always hoped to have, a reserve cash fund of \$25,000,000 to \$30,000,000. I think it would follow that we could have raised the money by selling it to our own stockholders just as well as to anybody who was not a stockholder. I don't know why they put that preemptive right in there, except it was to prevent people from taking advantage of a rise in the market, having rights that somebody else would have to pay for. They wanted to use that new stock where it would do the most good for Banco, and not to give the current stockholders a chance of buying rights or selling rights at a profit where the profit would not go to Banco.

I said in the Akers case "If the preemptive rights came in the general properties of the Bank would be jeopardized." Only to the extent I have just stated, that if there was any profit in selling that stock we wanted it to go to Banco, in its treasury, rather than to go as a bonus to the then stockholders who might sell it at a premium.

T. K. Helm—Cross

I think that the bank's borrowings were read to the directors every week and that they read a statement of the deposits.

Caldwell & Company's statement was read to us by Mr. Brown from a memorandum he had, and it did show that Caldwell & Company had some interest in four or five banks and four or five insurance companies, but it has been so long ago that I don't remember which now. The report also showed it had a large amount of state bonds.

I remember making the statement, "It was said that he owned banks that were in a chain of banks convenient for the Banco Kentucky Company and that he was the outstanding investment banker in the South and had contacts with innumerable customers who would be valuable customers to the Banco Kentucky Company."

When I say that a statement of Caldwell & Company was read to me, I do not mean that I ever saw a financial statement issued by Caldwell & Company. All I knew about it was from sheets of paper that Mr. Brown had received from Mr. Caldwell and read to us. It was a pad of paper, the statement which he had got from Rogers Caldwell, and he read it off to the board. If my recollection is correct, it showed \$30,000,00 assets, \$18,000,000 liabilities and a net worth of \$12,000,000. Caldwell was guaranteeing up to \$9,000,000 net. That was rather late in May 1930. I can't recall the exact date—it may have been the early part of May, it came up, but it was in May 1930. After one contract had been rejected another contract came back and the last one was revised, and I think it was executed about the 29th day of May, 1930. The meeting decided to take a chance without having any audit or seeing any statement of Caldwell. I think they acted directly on what Mr. Brown reported Caldwell furnished him with without having an audit. There had been discussion of an audit before that, but I think they abandoned the idea.

T. K. Helm—Cross

I remember testifying before the Jefferson County Grand Jury in the March Term, 1931. I have testified seven times in these cases; this is the eighth time, usually on different topics. I went before the Grand Jury at one time, I think, in regard to the \$2,000,000 loan out of Banco's money wasn't it? I don't remember that this relates to the Caldwell deal. I said at this meeting, May 29, 1930, that some were still insisting that we were taking a chance in not having an audit.

I don't know anything about Banco Kentucky Company's going into the market and buying up its own shares of stock. I have heard it. I heard at the trial that something of that sort had happened, but I didn't know anything about it at the time. I heard they spent two and a half million dollars in this period buying up their own stock either in connection with the indictment or trial, or in some other way. I did hear some testimony along that line, but I have no personal knowledge about it whatever. I know absolutely nothing about their buying a block of stock prior to the end of June, 1930.

When we sat down in a directors' meeting of the National Bank of Kentucky, we got a clip sheet. It was the daily report of the loans committee and those six days were clipped together with some kind of fastening, and they did call them "clip sheets." They were fastened together loosely like some of your books. They have been mistakenly reported as "slip sheets." There was one sheet for each day, showing the action of the loan committee on the loans that it had passed on or had been passed on by individual officers up to five thousand dollars. I think anything over five thousand dollars had been passed on by five out of the eight members of the loan committee. They met twice a day and their daily report was mimeographed separately and then put together. They covered one week's time,

T. K. Helm—Cross

from one meeting to the next meeting of the board. These loan committee reports were handed to each and every Director as they entered the room. At each weekly meeting we had before us a complete list of all loans of any amount or the renewals with the collateral, the surety, and the name of the company.

Those clip sheets were taken up and destroyed at the end of each meeting so as to keep the affairs of the Bank confidential. They were so afraid they would get in the hands of the public that they were destroyed, but on two occasions they let me take them with me. I filed the only ones I had in the directors' suit. If I can find one of the clip sheets I will do it.

I was one of the lawyers on the Board, and all the lawyers on the board of Banco Kentucky Company were requested to read the Caldwell contract. I did go out to Mr. Brown's house about ten o'clock at night, upon a telephone request. Mr. Carroll and Mr. Vaughan were already there. I was out there the night Mr. Caldwell and a man by the name of Mr. Goodloe and some other gentleman from Caldwell & Company were there. I think Mr. Carroll or Mr. Vaughan or some of them actually wrote down some amendments in long hand. I know that the Board meeting that afternoon, May 29th, 1930, instructed us definitely what to do, and I think we tried to do what we were told to do, but whether it came back before another meeting of the Board, I simply can't recollect, without looking at the minutes. That deal with Caldwell was completed without our Board or myself having any other knowledge of what Caldwell's assets were than what Mr. Brown told us Caldwell had told him. I would like to say not only told him, but gave him a memorandum which he was reading from. I saw the memorandum on Mr. Brown's desk. I did not look at the figures. Mr. Brown said they were figures Caldwell had furnished

T. K. Helm—Cross

to him. It was Brown's memorandum of what Caldwell had furnished to him. The figures show Caldwell had twelve million dollars over liabilities.—Over nine million dollars. He had a balance in excess of nine million dollars and claimed to have twelve million dollars net.

According to Mr. Brown, Caldwell had refused to have an audit made until the trade was agreed upon, because he did not wish to submit his private papers to outsiders until the trade was consummated. And the trade would not be consummated in full until there was an audit. The stock was held in escrow pending adjustment from the audit. The basis of the issuance of Banco stock was \$25.00 a share.

I have read my testimony before the Grand Jury and if you will point out what you want me to refer to or refresh my recollection from, I will do it.

I testified that at this meeting of May 29th at Mr. Brown's house, one of the corrections that was made was that they were not going to deliver any stock until they got a final audit, and they were going to hold back 250,000 shares out of 800,000 shares and 100,000 shares was a wash sale whereby the Banco Kentucky Company was buying the Kentucky Wagon Works, which had been a sore spot in the National Bank of Kentucky for years. I see it in this Grand Jury report. I think, as a matter of fact they held out 200,000 shares instead of 250,000. I was testifying at the Grand Jury without previous notice and without any record, but I do know they expected an audit to be made.

With the exception in the correction that 200,000 shares instead of 250,000 shares were held out, my testimony before the Grand Jury was correct. It was my then, off-hand interpretation of the contract, but the contract speaks for itself.

The transaction with respect to the 100,000 shares of Banco stock and the Kentucky Wagon Manufacturing Com-

T. K. Helm—Cross

pany item was not, according to my interpretation, a wash sale. Someone had previously referred to it—I think one of the examiners had used the word—and I was adopting the word of somebody else.

The contract shows that as a supplement to the main contract Caldwell & Company was taking the Wagon Company to be liquidated by it, or refinanced by it, and he gave—Banco gave to him 100,000 shares of Banco stock, which he delivered to the Bank on consideration of the—of all its right in the Wagon Company. He was to liquidate it without cost and the proceeds were to come back to redeem that stock. I don't know what a wash sale is. It was in a circle.

Caldwell was to hold the Kentucky Wagon Company for Banco's benefit but the Banco stock was to be sold and redeemed when the Wagon Company was sold, as I recall it—I can't remember how that worked out.

With reference to whether the contract was not to be consummated or dividends paid on the Banco stock until the committee had passed on the guaranteed values, the Directors, on motion of Sam Stone, appointed a committee to assist the President in appraising the assets of Caldwell. That committee was composed of George Boomer, Bob Vaughan and C. F. Jones. That audit was to be reported back to the Board in connection with the consummation of the sale and delivery of the stock, all of it. I heard Mr. Vaughan say the committee never met. I don't know whether they met or not. They never reported back any appraisal of assets. I did hear later that they had taken back 200,000 shares because Caldwell was not ready for any audit until the end of the year—they took back an additional 200,000 shares because of his desire to postpone the audit. My recollection is that 400,000 shares of the 800,000 shares were taken back. As to the 400,000 shares Caldwell held, dividends were not to be paid on that until it was sold and there was an audit.

T. K. Helm—Cross.

The conditions under which the stock was delivered were never fulfilled by Caldwell. You remind me of the way Jim Brown said there wasn't a consummated contract. I thought it was a contract—he brought a lot of this trouble on by saying we didn't have a trade with Caldwell & Company and I thought we did.

I saw a statement of the BancoKentucky Company which showed five million or six million cash which I thought was being spotted around with the banks in the BancoKentucky alliance. That is what I thought at that time. With reference to my statement: "There was a good deal of noise in the board meeting so when they read these minutes I don't suppose that anybody ever listened to the minutes and when we got through reading it in the board there would be a regular buzz like a ladies' reception going on," appearing in my testimony before the Grand Jury, may I explain to you exactly how that meeting was conducted and what I meant by that statement.

The Court: Go ahead and explain.

There were about thirty or more men on the directors. They were all friendly and all in different lines of businesses. When they gathered they would give them these clip sheets and some of them would look at it and others would talk over current events and other business. There was a good deal of talking. The minutes were more or less stereotyped, as you can see by looking at the minute books. If there was anything important came up the noise would quiet down, but in the first five or ten minutes before the hour of meeting, and until five or ten minutes after the hour of meeting there would be discussions on the Loan Committee reports. The reading of the minutes was conducted in the usual way, just like they read the minutes in court, or in any other organization. When I talked there about a hum or buzz in the meeting, I meant

T. K. Helm—Cross

when the directors came in and passed the time of day and looked at the clip sheets—I would ask Mr. Akers or Angereau Gray “What about this loan?” or “this borrower.” In that group practically every name appearing on a clip sheet would be known to someone. If I had come to a particular name, I didn’t know, I would say, “Judge Marx, do you know anything about this person?” and he would say, “No, but Alf Kreiger does.”

516—That isn’t an answer, that is a speech.

A.—You asked me if there was a noise.

517—Did you make this answer: “I don’t suppose anybody ever listened to the minutes. Most of the things were very small. Nobody paid much attention to them. Every single one of those loans was given to us on a mimeographed list. When you got through reading it in the Board there would be a buzz like a ladies’ reception going on. Many things may have happened there that I didn’t hear. That meeting was pretty large. I think there were thirty-four of us there. They would be scattered all around the room.”

A.—I testified that way before the Grand Jury when they jumped me up without any notice of what they wanted.

Before the Grand Jury I testified that the reason for the Caldwell deal was: “Of course, in the shake-down it turns out that we swapped them 400,000 shares of what turned out to be worthless stock for 10,000 shares of worthless stock.” That is what I thought was the fact.

I was one of the committee of three that went to Cincinnati to dispose of the Cincinnati banks. The same day the National Bank of Kentucky closed we were advised of a run on the Cincinnati banks, the Pearl Market and the Brighton Bank. Bob Vaughan had not gone to Paducah or Ashland at that time. I say that because I know I telephoned to him and read the contract we were making up there over the telephone to Bob Vaughan and his stenographer.

T. K. Helm—Cross

The closing of the Louisville Trust Company and the National Bank of Kentucky was coincidental. About five o'clock on Monday, the 17th, I think it was, we were advised that there were runs on both the Cincinnati banks. We heard about Covington when we arrived in Cincinnati. I don't think we had any in Newport. I suppose after Louisville, we had most of Banco's money invested in Cincinnati, that is my recollection. We left Louisville about ten or eleven that night and arrived in Cincinnati about three thirty in the morning. I don't know what Banco's statements showed at that time. We were sent there with general instructions to make a report which you have seen in connection with the suit against the Cincinnati Clearing House Association. That was about as near *res gestae* or a spontaneous response as a man could give you, because we had been up three or four days and nights. I dictated that after we returned, and you have that report.

We sold the banks for money, and considerable money, and in my report I said if we had let them be closed, there might be a double liability on the Banco Kentucky Company. At the time we went to Cincinnati I wouldn't call the only assets we had, that were free from pledge, a few shares of bank stock, in considering the amount of bank stock that we owned.

The report was made, approved and adopted. It was as accurate as I could make it at the time and I suggest that that be made a part of the record.

The Court: Make that report a part of the record here.

It is in the report that one of the reasons we made the sale was that we thought from the facts that, unless we did, we would not only have lost the whole seven million dollars, but would have lost the double liability which would have amounted to \$500,000, or \$1,500,000. I don't recall that we talked about double liability that night. They did say that

T. K. Helm—Cross

the Pearl Market Bank was in bad condition. Did I say we talked about it that night in my testimony?

(The witness was handed a record.)

I so testified in a suit of Banco v. Cincinnati Clearing House, where Judge Marx had me on cross-examination, that we did talk about what we might lose if we did not take the Clearing House proposition, and that is in the report. That was a liability which I did not want to fall on Banco when we sold the banks.

I owned 50 shares of Louisville Trust Company stock prior to the unification. My recollection is that I kept my original ten shares that I got in 1911 and turned in 40 and got back 10 shares of National Bank of Kentucky stock and 30 shares in Trustees' Participation Certificates.

It was probably handled this way. I turned in my 50 shares of Louisville Trust Company stock at \$100 par and got back 10 qualifying shares in the Trust Company and 10 qualifying shares in the National Bank of Kentucky, which were issued to me by the Trustee, and 20 Trustees' Certificates. I signed a contract with the Trustees, reciting, in effect that in the event I ceased to be a member of the Board, by death, or resignation or for any other reason, or if my stock was attached or attempted to be attached by any creditor, that stock would immediately go back to the Trustees and they were to issue to me Trustees' Certificates in lieu thereof. But I did think I kept my original ten shares of Louisville Trust Company stock, but it was under the agreement, and I did under the agreement deliver that to the Trustees.

I did have physical possession of shares of the Trust Company and the Bank but I returned them to the Trustees. My recollection is that I did not have that stock but I had physical access to it. I could only take out Trustees' Certificates. If I wished to transfer that stock, they had

T. K. Helm—Cross

the first claim on it by option, as agents holding it, but I had the equivalent in Trustees' Participation Certificates. If I had wanted to transfer to you ten shares of stock in the National Bank of Kentucky while I was director of that bank I could not have done so by reason of the Trust Agreement I had signed. Under the Trust Agreement I had given the first option on it to the Trustees.

I remember no such agreement in writing,—that if the Trustees should vote me out of the directorship that I would exchange my qualifying shares of Bank stock for T. P. C.'s. But that was the way I construed that Trust Agreement and the receipts which they gave when they took possession of my stock. That is my construction of it, and my recollection of what I intended to do. I remember no such agreement in writing unless it is in the Trust Agreement. That was the spirit of the proposition. And the understanding all the way around.

When I ceased to be a director of the National Bank of Kentucky, they returned to me a certificate for ten shares of National Bank of Kentucky stock and I transferred it to Trustees' receipts, or Banco Kentucky, I can't remember which. Probably it was to Trustees first and then Banco.

With reference to the Trustees' minutes of June 14th, Plf's Ex. 8 "Agreement in re: Return of Qualifying Shares," I imagine if there was any such agreement as that referred to in these minutes of the Trustees and I was asked to sign it, I did, because that was exactly what I was expected to do and thought I was doing under the Trust Agreement. I never expected to keep out my Louisville Trust Company and National Bank of Kentucky stock if I resigned as a director. I had a receipt that called for return to me of the stock if I had demanded it, but I would have been breaking my agreement.

T. K. Helm—Cross

The Court: Did you have any control over those certificates in the light of the agreement at the time you were a director?

A.—I did not; the Trustees held my certificates.

The Court: When you ceased to be a director, by reason of any fact ceased to be a director, you must necessarily have accepted T. P. C.'s for that bank stock?

A.—I understood that to be my agreement and I would live up to it.

I don't understand what you mean by asking if we have a long list of interlocking directors among the Banco chain. If you mean there were directors in these separate banks that were acquired, there were, but I don't recall that any of those were ever elected on the board of the Louisville Trust Company or the National Bank of Kentucky.

I see the minutes, Exhibit 23, minutes of the Banco-Kentucky Company meeting of January 20, 1930. I was present. They refer to the fact that Mr. ZurSchmiede, the Secretary-Treasurer of Banco, was authorized to endorse certificates for 340 shares of stock of the Pearl-Market Bank to furnish qualifying shares for men by the names of Lewis, Laffoon, Mitchell, Mosler, Heisacher and James B. Brown as directors in that Bank and also a certificate for one hundred shares in the Brighton Bank to qualify Mr. Helmers and Mr. Brown. I imagine that was done. That is two banks on which Mr. Brown was on the board besides the Louisville Trust Company and the National Bank of Kentucky. I don't recollect whether Mr. Brown was a director of the Peoples Liberty Bank and Trust Company in Covington. I don't know whether he was a director of the Central Savings Bank and Trust Company of Covington. He was given qualifying shares by that resolution but whether he ever qualified or not, I don't know. I don't know whether Mr. Brown bought any of these

shares of any of these banks. I don't know anything about how it was handled except what you have shown me in the minutes.

The Federal Reserve Board will qualify the same man to be a director in various banks. That was true as to the one they held up, Mr. Dodd was in other banks, and Mr. Boomer in the Security Bank, but they got additional information—as to how far the Board may exercise its authority in permitting the same person to be a director in different institutions I don't recall without studying the statutes. The Federal Reserve Act forbids interlocking directorates unless permission is obtained. That is what the law says, and that is the reason we had them qualified, in 1927 for the Louisville Trust Company and National Bank of Kentucky.

Regarding the other banks owned by Banco Kentucky Company, I haven't the remotest idea about what these several banks did about qualifying their directors. Each bank would take it up themselves. I never saw the letter where the chief National Bank Examiner, on May 20, 1930, called the attention of the National Bank of Kentucky to the fact that its President was a director in three National banks and six State banks, members of the Federal Reserve System, four of which has assets exceeding five million dollars. I was a director at that time and I do not recall of ever having heard of it before.

I think I saw the pamphlet, Plf's Ex. No. 76, giving the banks owned by the Banco Kentucky Company, the directors of the Bank, a financial statement of each bank, and a consolidated statement of all the banks. It was dated March 10, 1930, which was after I ceased to be a director of the National Bank of Kentucky. I think I saw that pamphlet in connection with the Caldwell trade in the next two months after that. My attention at no time was di-

rected to how many banks or trust companies Mr. Brown was a director in. It never occurred to me to check that.

I knew Mr. Maurice Galvin of Covington. I found out when we sold these banks that he was a director in both of them. I suppose he had been for many years, from the way he talked. I haven't any independent knowledge about Mr. Galvin being selected by the Banco Kentucky Board to act as its nominee on the board of both the Cincinnati banks and both the Covington banks, or that we issued stock to qualify him. No one could check this list without making a table like Mr. White has done and check each man's name through each of these boards. I know nothing whatever about Mr. Galvin not acquiring any qualifying shares of those banks, unless it is in the minutes, saying he had transferred shares, and I was present—I would probably be presumed to know it, but I have absolutely no independent recollection on that subject whatsoever.

There was no change in the general plan covered by the prospectus of July 19th, 1929, after the prospectus was sent out, except the amendment to the charter that has been testified to. I think that it would be presumed that when we signed that Prospectus we intended to do the things that were described therein.

I said in my testimony that I have never heard of the matter of double liability. I never saw Plf's Ex. No. 27; I never heard of this letter from Mr. Bean to Mr. Brown or what purports to be a draft of the letter to the stockholders. If any such letters ever ever passed, I never heard of them, and none was ever sent to me or to anyone else I ever heard of. The answer is "No," but I want to explain it. I now read the letter, though, and I can see old Dick Bean was a salesman. I never saw or heard of a letter written by Mr. Hayes. I never saw Pltf.'s Ex. 37-1, or any similar letter, or similar to Pltf.'s Ex. 37-3.

T. K. Helm—Cross

594—You knew about Mr. Ormsby's trip to New York in an effort to raise some money for the National Bank of Kentucky in October of 1929, didn't you?

A.—I have a recollection that he made the trip.

595—And that at that time Banco had to borrow a million dollars for the use of the National Bank of Kentucky, didn't it?

A.—Whatever the minutes show on that subject, I agree to.

My recollection is that the T. P. C.'s, when split into one-tenth of their former value, went to about 45 or 46 on the market. The last purchase I made was on the basis of \$426.00 a share, but that was a long time before Banco was under way. When Banco was organized and the plan of July 18th arranged, the price of Banco was fixed so as to yield a further profit on the exchange.

You show me Exhibit 30, a letter addressed by Mr. Bean, "To Our Directors" and marked "Confidential" on the stationery of the Louisville Trust Company. I was then a director of the Trust Company. I still say Richard Bean was a good salesman, and he was thinking about Banco sales at that time, August 13th, 1929. I don't know where Dick Bean got those figures or how he arrived at this per cent. I don't know whether the letter was circulated among the directors. It is marked "Confidential." He may have just read it. In this he says there was an increase in value of 176% in ten years besides paying dividends regularly. That is when they were talking about selling Banco stock. I have no doubt Dick Bean put that out, because, as I say, he was a fine salesman, but I don't know where he got his figures.

I looked over Mr. Bean's testimony before the Board of Education of the State of Kentucky. I was called up there and that testimony has been written out and was shown

T. K. Helm—Cross

to me and I read it to get the general drift. I don't even recollect that I read in his testimony that 1000 dollars invested in bank stock in 1929 equalled \$2,766.00 at this time. I went up there and they asked me to look at it and elaborate upon it. I did. I didn't pay any attention to Dick Bean's computation of the profits on a percentage basis.

In February, 1930, there was an underwriting in Louisville of \$600,000. first mortgage bonds of the Louisville Railway Company. I think my partner, Mr. John Doolan, was interested in that some way for the Fidelity. I was not a director in the National Bank of Kentucky, and don't know what they did. I was on the Advisory Committee which directed the voting of all the stock in the Bank, but that didn't mean I kept up with all the things that the National Bank of Kentucky did in the way of loans, underwriting and refinancing. I don't think Banco did participate in that underwriting. I don't know how those people were related; they probably had some prior commitments. I was a director of the Louisville Trust Company and have some recollection that the Trust Company participated in that underwriting in the same Syndicate, but no detailed information of it. I say Yes, the Louisville Trust Company did participate in that underwriting, but the details I do not recall.

Some times there were severe declines in the deposits reported in the National Bank of Kentucky, but in the meantime there would be substantial recoveries. That is what I meant by a fluctuation. I think that \$56,000,000 was probably the peak of deposits in February, 1927, in round figures. That was before I went on the Bank board. In April they were \$46,000,000. In the next year it was still \$46,000,000.00, some of it. It was down to about \$38,000,000 at the end of 1929. I still say it fluctuated up and down. That table speaks for itself, but I have given the reasons

T. K. Helm—Cross

that were given to us as to why it went down. There were about five reasons. Whatever the figures show is probably correct. I can't remember those figures. I didn't know that the bank started with \$56,000,000 in 1927 and wound up in the month before the Bank closed, so as to eliminate the run, with \$35,000,000.

The deposits are debts of the Bank. Banks do want deposits, and they do fluctuate up and down seasonally, by withdrawals of large deposits to pay bond issues or otherwise. They do fluctuate in the country banks. If you ask me did I take the complete chain of statements of deposits, week by week, to see whether the general trend was upward or downward, I say I never did do that, but the figures show the trend was downward, but with fluctuations up and down. I don't think there was a general trend downward in the Louisville Trust Company.

I was a director of the Trust Company from 1911 to its close. If the Trust Company Directors' Minutes say I attended the meeting of Sept. 12, 1930, I was present. Mr. Bean made the report to the Board that there had been a slump of about nine per cent and that it was not very encouraging to lose about a million and a half deposits, or about 9% with the other banks in Louisville increasing their deposits from 3% to 5%. I think Mr. Bean was probably giving the Directors a pep talk. He was a good salesman and he wanted the Directors to go out and get deposits. Those are the original minutes of the Louisville Trust Company.

The minutes say:

"In commenting on the big slump in our time deposits of \$2,000,000, Mr. Bean read a list of 31 large accounts, aggregating \$1,700,000 that had left us in the past year. He expressed the belief that these were special or commercial deposits and that they should not

T. K. Helm—Cross

be construed as having any particular significance so far as our regular savings depositors were concerned. In a year's time our total deposits show a decrease of 9 per cent—\$1,500,000—which is not very encouraging in view of the fact that the total deposits in Louisville increased 3 per cent, or \$4,500,000; however, we feel that this was more or less special, and while we have to bear the burden of a real loss, still it does not indicate that we are losing our regular patrons."

I was present. That is the way Mr. Bean talked. I heard him say that. That was one of his pep talks. I think he was calling the attention of the Directors, as was proper, to the fact that they were losing some of their large accounts, and he wanted them to get out and see what they could do about it. He said it wasn't serious, but not very encouraging. That was about the effect of it.

With reference to the reading of the Examiner's Reports before the Board of Directors of the National Bank of Kentucky and Louisville Trust Company, Mr. Brown read those reports. He was not on the Loan Committee of either the Bank or Trust Company.

Four Vice Presidents of the National Bank of Kentucky who were on the Loan Committee, were Directors; four Vice Presidents who were on the Loan Committee were not directors but were invited to be present at all meetings. As to how many of those eight attended these meetings, you will have to ascertain from the minute book. Some of them always were present. None of the Loan Committee, nor the Cashier, Mr. Jones, who was not of the Loan Committee, ever made a single criticism of Mr. Brown's presentation of the Bank Examiner's Report. I mention Mr. Jones because we went to him as Cashier of the National Bank.

The Directors of Banco Kentucky Company approved the tentative contract relative to the purchase of the stock of

T. K. Helm—Cross

the Pearl Street Bank and Market Street Bank located in Cincinnati (The Pearl Market Bank and the Brighton Bank) just a few days before the cash was payable on the subscriptions. It was about September 27. At that time I don't know how much had been paid, but they did it believing that they had subscriptions in sight that would pay off October 1st, when the Directors approved the trade that Mr. Brown had made, or was in the process of making with the Pearl-Market and Brighton Banks. It was just a day or two before the money was payable.

The trade was approved September 27, 1929, but Mr. Brown was authorized to proceed, on September 11, 1929, with negotiation and he reported the state of his negotiation and received authority to close the trade on Friday, September 27th. On September 25th Mr. Brown filed with the minutes the trade he made with the Cincinnati Bank.

The question of bank stock being held by trustees for the benefit of one individual had been discussed by me with the Banking Commissioner prior to the time I appeared before the Banking Commissioner and Board of Education in reference to securing the transfer or exchange of the State's Participating Certificates for Banco stock.

With regard to my submission to the Banking Commissioner of the plan under which the six Trustees were to hold legal title to more than 50% of the Louisville Trust Company stock for the benefit of Banco Kentucky Company, I am going to have to explain that exactly the way it was brought up. I was asked about a letter of December 3rd, 1929, to Mr. Brown or to Mr. Jones, calling attention to this limitation in the Kentucky Statutes. I was special attorney for the Louisville Title Company, and my attention was first called to that subject when the Banking Commissioner objected to it holding the entire capital stock of the Title Guaranty & Trust Company as a subsidiary.

T. K. Helm—Cross

Having the matter brought to my attention that way, I felt it my duty to report to the officers of Banco that this provision of the law might be applied. The ruling was that where there were six Trustees for various beneficiaries, that there was no violation of the statute. The Board of Education and the Attorney General had the same matter, in connection with Banco's acquiring a majority or more than a majority of the stock of the Louisville Trust Company, and I took it up with the Banking Commissioner, and that is what is referred to in this letter, for I was recommending a change in the law to clarify it. I gave them that information myself.

After the stock market break in October, the charter of Banco was amended so as to increase the authorized capital stock from 2,000,000 to 5,000,000 shares. The reason we did exchange some of this newly authorized stock for bank stock instead of selling it on the market for cash is an economic proposition, that there was a parity of value of the corporation where you are trading stock, just a little different from raising cash. When the crash in the market came, it was easier to swap stock than it was to sell for cash, at that particular time. The plan of the organizers of Banco Kentucky to create a fund for the purpose of engaging in the lines of business and the purchase of other types of shares other than Bank stock, had not been abandoned in any way.

The expectation or belief of the directors, as expressed in their meetings, in reference to the continuance of the slump that then existed in securities—they were optimistic; they said "Prosperity is just around the corner" and they thought the depression would be over very shortly, and and they were convinced of it, I think, when the market slightly recovered in April, 1930.

T. K. Helm—Recross

What I meant by the statement read to me from my testimony before the Grand Jury, with reference to exchange of worthless Banco stock for worthless Caldwell stock, I meant at the final shake-down or wash-out it meant that they had 400,000 shares of Banco that was worthless at that moment, and we had 10,000 shares of Caldwell that was worthless at the moment. I meant by that the final outcome of the original trade.

I never took up or discussed with any of the directors or with the Board of Directors the matter of this holding of 50% of the stock of the Louisville Trust Company except by these letters to Mr. Jones and Mr. Brown, and before the Jurisprudence Committee of the Kentucky Bankers Association.

I never did take it up in a board meeting, because we were doing all we could to get the Dern law changed. We didn't get it changed.

(Recross-examination by Mr. Marx)

On recross-examination by Mr. Marx, Mr. Helm testified as follows:

All eight of the Vice-Presidents of the National Bank of Kentucky, J. S. Akers, E. B. Robertson, J. J. Hayes, H. J. Angermeier, L. L. Fontaine, were on the Bank's Loan Committee. All eight of them were invited to Directors' meetings, four as directors and four as non-directors.

The four non-director officers' attendance at the meetings was not noted in the minutes. They were required to be present.

J. W. Cammack—Direct

J. W. Cammack,

called for Defendants, examined by Mr. Van Winkle, testified as follows:

My name is James W. Cammack. I was elected Attorney General in the November Election, 1927, took office the first of January, 1928, and served four years in that capacity. At Attorney General of the Commonwealth of Kentucky, I was a member of the Sinking Fund Commissioners and the Board of Education. The Sinking Fund Commission was composed of Governor F. D. Sampson, Secretary of State, Miss Ella Lewis, Clell Coleman, Auditor, Mrs. Cromwell, the Treasurer, and I as Attorney General. The Board of Education consisted of the State Superintendent of Instruction, Mr. Bell and Miss Lewis and I as Attorney General.

The Board of Education requested representatives of Banco Kentucky Company appear before us. We had Mr. T. K. Helm, Mr. A. J. Carroll and Mr. Bean. We had Mr. Helm before us quite a number of times. I don't know Mr. Bean's official position but he was connected with either one or the other of those institutions, the Louisville Trust Company or the National Bank of Kentucky.

In 1928, I think, we had acquired what were called Participation Certificates. That was when the two, the Trust Company and the National Bank, formed a combination and those certificates were issued and the Board of Education took those Participation Certificates.

The stock that the State owned for School purposes in the National Bank of Kentucky was exchanged, and then, I believe, we took a one-fifth—anyhow, a proportional interest in the two institutions. They could not be consolidated because one was a national institution and the other was organized under the State. That was the first thing that brought us together.

J. W. Cammack—Direct

I might state that when this question of taking Participation Receipts came up before the State Board of Education, they were not consolidated, and as I understood, could not be.

At the time we had those conferences with the gentlemen representing the BancoKentucky Company the Commonwealth owned, not to be exact, but somewhere about 776 Participation Certificates, representing, I think, the total value of the Commonwealth stock in the National Bank was something like \$300,000, maybe more than that. 776 of a par value of \$100 each.

I was present when Mr. Helm, Mr. Carroll and Mr. Bean appeared before the Board of Education as representatives of the BancoKentucky Company at our solicitation. We were particularly anxious to find out just what the relative positions of the three institutions would be, and we inquired of the gentlemen present—I think that included Mr. Helm, because he was in the conference, and of course, gave us the information that it was a separate institution in itself.

The circular letter of July 19, 1929, was probably presented a few days before this conference, to the State Board of Education.

This conference occurred before a special called meeting of the Board of Education and Mr. Helm was notified of the time and place of the various meetings; he was there for several meetings. Minutes of those meetings were kept and they are available.

Mr. Van Winkle: I can simplify this: Mr. Bean's statement was taken down in shorthand and I have a certified copy of this statement, but not of Mr. Helm's and Mr. Carroll's.

I can recall what was said by these gentlemen, in an indefinite way, state that what Mr. Bean said and also Mr. Carroll and Mr. Helm when they were there together.

J. W. Cammack—Direct

These gentlemen were asked questions regarding the relation of these corporations. There was one meeting at which Mr. Carroll and Mr. Helm and Mr. Bean attended. It was a rather elaborate meeting, and that was the only time, I think, that Mr. Carroll appeared before the Board. All three talked and gave the position—I remember Mr. Carroll was very insistent on the Board acting immediately and finally. I took the position that we were not in a position to act, and Mr. Carroll and I, while we were friendly about the matter—had a difference of opinion about what the Board should do, whether to postpone it or act at that time.

The purpose of the conference was this: We felt that in our Participation Receipts we had a stock that the Commonwealth was safe in owning, and then, when the Banco-Kentucky Company came in. I had ascertained from the charter I saw that it could do most anything—own steamship lines and railroads, and go into various kinds of business that a bank could not do, and if Your Honor will permit me, I will say that I so advised the other members of the Board, of the status of that charter, but not in the presence of these gentlemen.

I was the legal advisor of the Board and was the only attorney on either Board except Judge Sampson.

As I recall, and I am rather definite about that, neither of these gentlemen at any time made a statement that the Banco-Kentucky Company was intended to or was in any way a reorganization of either the National Bank of Kentucky or of the Louisville Trust Company. Now, remember my conversation with Mr. Carroll was just once; but with Mr. Helm it was numerous times.

The paper you show me seems to be a resolution only of State Board of Education and not of the Sinking Fund Commissioner. This was February 17, 1930. Now, I think

J. W. Cammack—Cross

the resolution, probably, that you have reference to adopted by the board and the Sinking Fund, is the one dated March 12th or something like that.

(Cross-examination by Mr. Marx)

On cross-examination by Mr. Marx, Attorney General Cammack testified as follows:

The dealings with Banco happened in the year of 1929 and the beginning of 1930. And as far as the things that are not in writing are concerned I have nothing but my recollection. It is now approximately ten years ago—it was done in 1929 and 1930. I was a very busy man and had a great many matters before me one after the other.

The transfer of our \$100 certificates into ten \$10 certificates came up in '28 probably. Originally the Commonwealth of Kentucky owned stock in the National Bank of Kentucky concerning which there are various statutory and constitutional provisions. It begins far back, prior to 1850. About 1919 it merged with the National Bank of Commerce and the American Southern National Bank. I am not very definite about anything that occurred at that time, because I was not attorney general then.

Mr. Helm probably told me by communication—letters—that the National Bank of Kentucky, to a very large extent, changed its identity, location and officials when it was merged with the National Bank of Commerce and American Southern National Bank. I don't remember that the stock was exchanged to Trustees' Participation Certificates, which represented 80 per cent National Bank of Kentucky and 20 per cent Louisville Trust Company. I don't recall that Mr. Helm told me that the new, proposed change in the holding of Trustees' Participation Certificates was the unanimous recommendation of the same men who proposed and put through the other changes, which had certainly

J. W. Cammack—Cross

proved very profitable to the stockholders, including the State of Kentucky. I have not read that letter. Probably I may have read it some five or six weeks ago, but I have not recently.

I think Mr. Helm stated in substance to me, probably in a letter, that the 73,500 of stock in the Bank of Kentucky referred to in the Constitution was supplemented, in 1927, by the purchase of an additional 63 shares, and in April, 1920, incident to one of the mergers the State received a refund of \$45,000, and that this refund and the original investment had a market value of \$364,000 in addition to which the State had received, during that time, quite handsome dividends.

I will say this, Judge Marx, this question about the Commonwealth's rights in this stock goes way back, many, many years prior to 1850, and probably as far back as 1834. Now, at the time we are dealing with these problems I was advised in regard to the different Acts, but since I have ceased to be an officer of the Commonwealth in that capacity, I am not able to call your attention to them as I knew them then.

This carbon copy is a copy of a letter sent me on August 29, 1929, by Mr. Helm. I am satisfied that I received it. It notes, "Copy to C.F.J." Mr. Charles F. Jones had some connection there with the National Bank of Kentucky.

Said letter received in evidence and marked for identification "Plaintiff's Exhibit No. 161."

In this letter Mr. Helm said to me:

"It is true that the present Banco Kentucky Company's form is somewhat different from that which I had in mind and discussed with you early last year, but nevertheless, it is an extension of the same idea referred to in my letter to you of March 27th, 1928, when I said, 'As I explained to you, the Bank is also

J. W. Cammack—Cross

contemplating further cooperative moves.' In the opinion of all the officials and directors, the present move tends to offer the best prospects of profit to the stockholders, and is regarded as absolutely sound. In fact, the plan is conditioned upon the holders of at least the majority in amount of Trustees' Participation Certificates owning at least a majority in amount of the stock in the Banco Kentucky Company, which is under the same management and officers as have heretofore successfully conducted the other institutions."

I do not recall the time or place of the conversation he referred to as "early last year," but I can tell you that Mr. Helm did, on various occasions, have conversations with me—sometimes with the Board and sometimes the conversation was with me alone. Now, there is no question but what Mr. Helm had a conversation with me similar to that he is directing my attention to in this letter because he had plenty of opportunities to do it. Judge, I want to state this to you: This was a serious proposition, involving many thousands of dollars of the State School Fund, and I, as a member of that Board of Education and a member of the Sinking Fund Commission, took it as a rather serious proposition and wanted to get at what was right and what was fair to the Commonwealth.

Having acquired the Trustees' Participation Certificates we had more than an ownership in the National Bank of Kentucky, we also had ownership in the Louisville Trust Company.

The first question we had come up was not the exchange into Banco Kentucky, but whether the State should agree to split its \$100 Trustees' Participation Certificates into the \$10 Trustees' Participation Certificates. We had never heard of the idea of Banco Kentucky at that time, when the proposition of the split came up. I even went very slow on that split. We did make the exchange into the \$10 certificates.

J. W. Cammack—Cross

Then they came along with the proposition that they wanted us to simply exchange our \$10 Trustees' Certificates for two shares of BancoKentucky stock. That was somewhat later.

Now, as to the effect of what Mr. Helm advised and what effect it had on my mind, why, I am not able to say to you now. I know this, that Mr. Helm did, on various occasions, talk to me in regard to the BancoKentucky project, and I went slowly on that because I wanted to see that the Commonwealth was protected, and it culminated in the drafting of the resolution, I think, of March 12th, which I believe I drafted myself. That was introduced by Senator Brock in the Legislature, but it failed to pass. At that time the State Board of Education and the Sinking Fund Commission went on record as being in favor of the transfer, or if you want to call it that, the purchase of the BancoKentucky stock, and that, as we considered it, was in a way the matter of a reinvestment.

Mr. Helm took the position that the State Board of Education had authority to make this transfer. I took the position that that was not the law, that it required an act of the Legislature to do it. And I think probably Mr. Helm came to my conclusion about that—at least, I had my way about it. Both the Board of Education and the Sinking Fund Board followed my advice. The exchange was never made because the Legislature failed to pass the resolution.

I won't say as a matter of law that the State was liable for double assessment on the Trustees' Certificates which it held, because I took the position that the State was not liable—that the State is sovereign and was not subject to the same liability as a citizen. I took the position that the sovereign was exempt. I did that to protect the State. I don't know if they ever paid the assessment or not; I am not familiar with that.

J. W. Cammack—Cross

In Section 185 of the Constitution, the Sinking Fund Commission had a right to reinvest. I had some doubts about the law clearly giving the Board of Education the right to sell. Mr. Helm took the position that that was the law, but I read that section of the statutes covering the State Board of Education together with Section 185 of the Constitution and took the position that they were not asking us to our Trustees' Participation Certificates for cash—they were asking us to exchange T.P.C.'s for Banco-Kentucky stock. I was satisfied that they did not have the power to do that without an enabling act of the Legislature.

The resolution was drafted to confer the legal authority in case they wanted to make the exchange. The Legislature did not pass it. In connection with this exchange we recognized formally by resolution, two distinct problems, namely, the legal question we discussed here and the additional economic question as to whether this exchange was, from an economic standpoint, a good one.

The Legislature convened about the first of January, the first Monday in January, 1930. This resolution was March 12th, 1930. The Officers and Directors of the Bank conferred with us three or four times, beginning in the latter part of 1929 and up to March 12th, 1930, and it was culminated in the proposition to submit an enabling act to the Legislature.

Mr. Carroll probably appeared before a joint meeting of the State Board of Education and Sinking Fund Commission—I am not certain about it. Mr. Carroll took the position that the matter had to be closed up within a certain time—I won't give the date. He was very positive that that would be the last minute that this matter could be disposed of, and that if the Commonwealth did not take advantage of it it was out. I took the position that that was not right and fair towards the Commonwealth, and I said to

J. W. Cammack—Cross

him that we were not going to be driven into this matter, but if you want to give us an extension we will consider it, and that was done.

The letter of July 19, 1929, outlining the proposed plan was before the Board. Just when that got there I don't recall.

The members of this committee which went down there urged us to make the exchange on the ground that it was for the best interest of the stockholders of the National Bank of Kentucky to do it. They were advising it.

90—I mean on the ground that it would be a profitable thing for the stockholders of the National Bank of Kentucky.

Mr. Crawford: Is there any question that we organized Banco to make a profit?

Mr. Marx: We charge that they organized it to enrich themselves.

The Court: I think the testimony is abundant that they invested in this stock with the idea of making money.

I am quite sure Mr. Bean made the statement, when I asked if it would result in something like this—that the BancoKentucky Company will be the parent organization with a bank and trust company feature."

"I think you might consider that the BancoKentucky Company will be partially a holding company but not an operating company; because if it holds stock in a dozen banks, it will function as individual units controlled by its own Board of Directors."

I am quite sure in the first place that I asked the question that Mr. Bean made the answer as you have it. Mr. Helm and Mr. Carroll were there at the time.

Mr. Helm then stated that he was not present and the witness stated that only Mr. Bean was present at the time this question was asked.

J. W. Cammack—Cross

I asked Mr. Bean: "Will you state why you incorporated under the laws of Delaware rather than the laws of Kentucky?" and Mr. Bean said: "The main reasons are that the taxes are lighter and the powers are broader. Incidentally, there is no state tax—there is no Kentucky State tax on the stock of the Banco Kentucky Company because more than three-fourths of its assets would be in Kentucky. I asked him: "One of the advantages would be to avoid the payment of taxes required of taxing districts of a Kentucky corporation; isn't that true?" Mr. Bean said: "Taxing District." Then my son, J. W. Cammack, Jr., said: "Yes, about market values."

Then Mr. Bean said:

"We suspect that fully 80 per cent of our stockholders will transfer their stock, and the inevitable result of the other 20 per cent will be that they have lost the privilege of converting into the Banco Kentucky Company stock, and that they have only a limited number of stockholders and outstanding shares of stock to trade in, so there will not be a wide market available to them. If they do convert, then they will be stockholders in a company that will have probably 3,000 stockholders and will have 2,000,000 shares of stock outstanding. These two conditions promote a ready sale at a good price."

My son at that time was not a member of the Board of Education, nor connected with it in any way, but he was connected with the State Department of Education and was evidently called in by Mr. Bell, the Superintendent of Public Instruction. Mr. Bell was chairman of the Board of Education.

Mr. Bell asked this question:

"I am thinking, Mr. Bean, of this particular thing: it puts members of the State Board of Education insofar as they have any authority to act in this, in a rather

J. W. Cammack—Cross

awkward position. If they do not convert, there appears to be the possibility that they will forfeit the market value of the stock. I have just been speculating here to myself what is going to happen if we let it stand at \$100.00 a share. Will it retain its identification? What is going to happen to this stock? It is immaterial to the State Board of Education whether its stock is worth \$460.00 a share or \$1,000.00 a share or \$1.00 a share. We get the same income from the stock regardless of its market value as it stands now. We, as custodians in a way, of this \$77,000.00 of stock, have an earning of something like \$12,000.00 a year—I don't recall—and would we continue to have that same income from it one way or the other?"

Mr. Bean answered:

"I think your question can be answered this way: Whether you convert your present \$100.00 par certificates into \$10.00 par certificates is not a matter of great importance to you because the value is the same and the income is the same. It is a matter of importance to us because of clerical convenience, and of having all of the securities that are outstanding in current form of securities. Now, the question of importance that you all must consider is whether or not you should convert these participating shares into the stock of the BancoKentucky Company. You have the right to fail to do that, and if you do fail to make the exchange, you will continue to get such dividends as the two banks pay. We figure that for many reasons it is to your advantage to make the exchange because we believe the BancoKentucky Company will pay bigger dividends than the two banks are now paying."

I am satisfied that statement was made. The first time that I read that statement, probably, since it was read and adopted as a minute to that meeting of the Board of Education, was last night. Since you have been reading it, I recall very definitely the conference at which Mr. Bean ap-

J. W. Cammack—Cross

peared, and very definitely the line of talk and statements that is embodied in that statement. Then my son asked this question:

"Could it be possible that the two banks as they are now would cease to pay any dividends at all?" and Mr. Bean said: "Our expectation is that the two banks will make certainly as much money as they have been making, and that the BancoKentucky will call these earnings from the Bank and will make even bigger earnings on the balance of its capital, thus enabling it to make bigger dividends than the two banks would pay." Then Miss Lewis asked: "This BancoKentucky Company is just as safe in every way?" and Mr. Bean said: "We think it is just as safe because it is going to be run by the same group of directors and officers."

I recall that at this meeting on August 13th, 1929, my concluding question to Mr. Bean was: "Another question I would like to call your attention to—Section 185 of the Constitution (General Cammack reads) I am calling your attention to this fact, that the question that confronts this Board and the Sinking Fund Commission is the transfer of stock of the Louisville Trust Company and the National Bank of Kentucky to the BancoKentucky Company will be prohibited, in my judgment, until the General Assembly authorizes such a transfer. I suggest that it would be probably a good idea to stay further consideration of this matter at this time, and have the Louisville Trust Company, the National Bank of Kentucky, and the BancoKentucky Company consider the legal inhibition provided in Section 185 of the Constitution, and if they so desire, report their action to this Board at some future time." In reply Mr. Bean made this statement:

"I would like to make this comment: That we will ask one of the Banks' attorneys to write you on the matter, and I suggest that it is the opinion of the Fed-

J. W. Cammack—Cross

eral Government that we are not changing our investment except in form, and that same opinion might cover this case. However, we will be glad to take up the matter and let you hear from us at an early date."

And then the meeting concluded.

At this same meeting I inquired whether this new organization was going to be subject to any banking supervision and Mr. Bean answered as follows:

"Mr. Bean, under the present law or laws, you have both national and state examination? Mr. Bean: Yes, sir. General Cammack: Under the reorganization will both the national laws pertaining to examinations of banks and the state laws of like matter, be in operation so far as the examination of the Banco Kentucky Company? Mr. Bean: The plan of examination under the new arrangement will be for the National Bank Examiners to examine the National Bank of Kentucky, and the State Bank Examiners to examine the Louisville Trust Company, just as they are now being examined. I do not believe that either set of examiners would undertake an examination of the Banco Kentucky Company because it is a financial institution and certainly will not qualify under the National Act, but it might be qualified to come under the State Banking Department—I do not know. As a practical proposition, the banks in Louisville are examined by a Clearing House Examiner, and that same form will certainly be the examiner for the Banco Kentucky Company."

After Mr. Bean had explained that we had made 176 per cent on our holding of this bank stock, Mr. Bell inquired:

"I wonder whether we are concerned about that any way at all or not? It doesn't make any difference about our participation in the earnings of the Company—whatever you may earn at present." Mr. Bean said: "I think you are interested because as your candidates"—I think that should be your "customers"—

J. W. Cammack—Cross

"consider what they shall do with this investment they will want to know the history of that investment and what it has produced for them. In other words, if at any time you are tempted to sell this and invest in other funds, it is well to know what the past history of this investment has been as that is an indication of what its future will be." Mr. Bell said: "From that standpoint we are interested, but from the standpoint of what it produces for us—is it going to be a production income?" Mr. Bean said: "We believe the new company will make a good deal more profit per dollar invested than the banks have been, and if the earnings increase the dividends will probably be increased." Then Mr. Bell said: "Is the rate of earning of our stock fixed whatever your earnings may be? In other words, does our identity in the organization have a fixed rate of dividend?" Then Mr. Bean said: "Dividends paid on bank stocks are decided on every quarter, and they are influenced almost entirely by the profits that a bank is making. For several years, the National Bank of Kentucky and the Louisville Trust Company have been paying 4 per cent per quarter or 16 per cent per annum. I see no reason why dividend rates should be decreased, but if the earnings decrease the dividends will probably be decreased also. On the other hand, if earnings increase materially, the dividends will probably be increased too. There is nothing fixed about a dividend rate in banks or other financial institutions." Mr. Bell: I see that from every angle; the matter that I was trying to get clear is, if this holding of the State Board of Education in the National Bank of Kentucky stock and Louisville Trust Company, if there is a fixed dividend for it?" My son inquired: "Will the Bank of Kentucky pay 4 per cent per quarter?" Mr. Bean said: "Yes, the National Bank of Kentucky and the Louisville Trust Company have already declared a dividend payable October 1, to stockholders of record September 15th. The Banco-Kentucky Company will not begin to operate until

J. W. Cammack—Cross

September 20, and it certainly will pay no dividend before December 31." Then my son said: "The question I am trying to ask is this: The par value of the stock, if transferred into the Banco Kentucky Company, would be just twice as great?" and Mr. Bean said: "No, you would have twice as many assurances" then my son said: "Would the dividend rate be reduced?" Mr. Bean said: "We would pay 2 per cent per quarter so that the amount of the dividend would be the same."

Independent of the paper that you have read from there, I have a rather distinct recollection about it, and that is because of having read that paper last evening and you repeating it today.

Mr. Bell then made this further inquiry:

"We are concerned about this broadening of the Banco Kentucky Company—you are simply broadening the field of activities to participate in various ways!" Mr. Bean said: "And we are modernizing finances. It is the modern method of performing financial service for your community, and under the Banking Laws we cannot perform these services."

Mr. Bean gave me a copy of the Charter and I read it. When I read the purposes of the Company they were world wide in scope. In other words, I said to my associates, "This is not a bank."

So far as the powers granted by the Charter were concerned, they could run a steamship line or engage in manufacturing cigarettes—most anything. I don't think they made it quite as broad as to authorize the ownership of all the shares of stock in all the corporations in America, but it authorized holding stock in corporations. So far as my being able to tell from the Charter what they were going to do, I could tell this: It wasn't a bank. I never considered it to be a bank. I don't know about the laws of

J. W. Cammack—Cross

Delaware; I knew it couldn't under the laws of Kentucky, couldn't operate as a bank. Because to be a bank you have to be under banking supervision.

I am not familiar enough to give you an intelligent answer to the question of whether or not one of the greatest objections to affiliate or chain banking or group banking was the fact that those holding corporations escaped the supervision of state and federal banking laws.

By simply reading the charter I could tell what they could do. As to how much it was going to do, I got a good deal of information from Mr. Helm, and I got some from Mr. Bean. If I didn't have any information, such as that contained in the letter of July 19th, 1929, setting forth the plan and I didn't have any information from any of the people connected with the organization and all that I saw was simply the cold articles of incorporation, I couldn't tell what they were going to do. I could tell only what they could do. Exclusive of what Mr. Bean and Mr. Helm said in those conferences I could not tell what they were actually going to do.

It was stipulated that the Board of Education minutes for September 18th, 1929, show that Mr. Bean was requested to have someone appear to discuss the proposed plan of reorganization.

Mr. Helm said that he had a conversation with me, in January or February, 1930, about the amendment or repeal of Kentucky Statutes, Section 581, which provides:

"Nor shall any person directly or indirectly hold or own more than one-half of the capital stock of a bank, exclusive of the stock held as collateral."

I don't recall. Mr. Helm, however, was Attorney for the State Banking Commission and he had frequent conferences with me about the banking situation. After this par-

J. W. Cammack—Cross

ticular conversation, I don't recall, but I am satisfied he did. I know of a good many conversations he did have on various statutes, but I could not give you the number of those sections of the Banking Act.

In a letter to the Bank under date of February 14th he says that I was reluctant to offer any aid in having that statute repealed. I think that is correct because I would never move unless I had a pretty good idea which way I was going. I would not involve the Commonwealth in a lawsuit unless the proper authority was brought and the Commonwealth in every way prepared to go on with it. I would say that Mr. Helm did not talk to me about the repeal of the fifty per cent bank stock ownership statute. On behalf of the National Bank of Kentucky, the Louisville Trust Company or the Banco Kentucky Company. First I have no recollection of anything connected with the repeal of this statute involving those institutions. It would probably be on that general proposition that he would discuss it with me.

I don't recall Mr. Helm taking up with me the matter of the Louisville Title Company owning more than 50 per cent of the stock of the Title Guaranty & Trust Company or that I objected to that or that the State Banking Commissioner objected, or that litigation was threatened or that those stocks were put in trustees, similar to the Louisville Trust Company and National Bank of Kentucky. There was just as much of that stuff that came along beginning with 1929. The State Banking department was represented by General Gilbert, Clifford Smith and myself in 1929, and when that trouble came there was an immense amount of work came in that department, and we three men were loaded with other work and divided that business up. It may have occurred before some of the other members of my staff.

J. W. Cammack—Redirect

(Redirect examination by Mr. Van Winkle)

On redirect examination by Mr. Van Winkle, General Cammack testified as follows:

Certified copy of excerpts of the meetings of the Board of Education of March 12, 1930, ordered made part of the record and marked for identification "Defendants' Exhibit No. 21."

In connection with the plan of reorganization the following statement was made to us by Mr. Bean before the Board acted upon the request to make this exchange of T.P.C.'s for Banco Kentucky stock:

"I take it that you want to know something about the proposed activities of this company, and to enable you to make up minds as to whether you think the trade is a good one, and if it is possible for you to make the trade if you want to do it. . . . Today we are loaning money at six per cent interest which is the same rate we got thirty years ago, but if you mean while our expenses have more than doubled, so that the margin in operating commercial banks is very narrow, and you have probably noticed that the big banks all over the country have taken on new activities. I'll cite you to the National City Company, Guaranty Trust Company, First National Bank Company. It's a thing with a lot of precedent. Our purpose for doing this is to comply with the regulations of the department at Washington—To avoid income tax. They say, and we hold, that while a man may own Bank of Kentucky stock, which is worth \$46.00 a share, it may have cost him only \$16.00 a share, and if he makes this trade, he will be selling it at \$50.00 a share; but he is really not taking any profit. So that the department says he should not be subject to any income tax. In order to comply with the suggestion of the Department, we call it a reorganization."

J. W. Cammack—Redirect

I will say that if that statement is taken from a type-written statement that Mr. Bean made, why then he made it. Independent of the fact that—whether or not it was taken by stenographer, I have a recollection, not distinctly, though, that something like that occurred.

I am satisfied that Mr. Bean made the following statement in the same appearances before the Board:

In further compliance we offer all of the stock in this new company to the present stockholders of the two banks. We rather think and expect that we will have left out of the total paid in capital of fifty million we will have left some fifteen million. It is our intention to use that in purchasing interest in other banks, and in pursuing the other activities that we contemplate having. Those activities are largely these: Today, the outside brokerage houses are coming to Louisville and to the State of Kentucky and are underwriting for Kentucky corporations. That service is worth a good deal of money, and the people receive quite a fee. It is a very profitable business.

"The next thing is that the Banco Kentucky Company will make long time loans to industrial or commercial houses. Today, the Industrial Foundation is doing that business. But hereafter we will loan money for five years or ten years on a long-time basis because they are willing to pay a good fee for that type of loan. They are now getting it elsewhere.

"The third activity is that we will take those people who are now not very welcome at banks; men who borrow as a speculation. Banks must keep themselves liquidated because they have a lot of depositors that may leave at any time. All Louisville banks have said in the last three or four months, we want you to sell enough of your securities to pay us off. All our money is being asked for by commercial borrowers and industrial borrowers. Under the new regime you can take these men over to the Banco Kentucky Company and

J. W. Cammack—Redirect

they will be glad to have it. Money is worth 9 per cent and they will charge you 6 per cent and fee. He is perfectly willing to pay the Banco Kentucky Company that fee.

"The next thing is money allowances. We seek holders of banks in other cities in other states. Banks that can throw out a good deal of patronage, and we believe they will prove a profitable investment.

"Another minor activity is the so-called investment trust idea. Just in recent years this has developed tho it is one of the oldest forms of investment in Europe. We expect to undertake that just in a limited way. Of course, it will entitle us to and secure for us the very best investment affiliations available in Chicago and New York. So that we feel that the Banco-Kentucky Company can make a good deal more per dollar invested than the banks can, because of restrictions."

In the course of that discussion by Mr. Bean before the Board the following questions were asked and the following answers given by Mr. Bean:

"Mr. Bell: The National Bank of Kentucky and Louisville Trust Company, as they have heretofore operated, or that particular phase of the activities of the new organization, would be subsidiaries to the major organization?

"Mr. Bean: No, Mr. Bell, that is not true, but you voice an idea there that a lot of people have. The formation of the Banco Kentucky Company is not going to make any difference at all. The Banco Kentucky Company is going to do a lot of financing for the customers of the two banks. We believe this type of financing will secure for us a lot of additional customers in the two banks.

"Miss Lewis: There is no connection at all except that you have the same persons interested in it? Is that true?

A. J. Carroll--Direct

"Mr. Bean: There is no real connection excepting that they are owned by the same crowd and they are largely operated by the same directors, but not by the same officers, and they are supplementary to each other, although are operating as three individual corporations.

"General Cammack: Where will the housing of the corporation be? Separate or under one business?

"Mr. Bean: It will be on the third floor at 421 West Market, the new bank building of the Louisville Trust Company.

"General Cammack: They will not then all three be operating as one institution in one building?

"Mr. Bean: No, they will be operated as three institutions by three different boards of directors, although directors in the National Bank of Kentucky and directors of the Louisville Trust Company will be on the Board of the Banco Kentucky Company."

Direct Examination by Mr. Crawford

A. J. Carroll,

called for Defendant, examined by Mr. Crawford, testified as follows:

My name is A. J. Carroll. I have lived in Louisville for fifty odd years. I have been a lawyer since 1894. I was a director of the National Bank of Kentucky prior to the time of the Trusteeing of the stock in 1927. I was a member of the Board when a sixty per cent dividend was declared in 1927. I knew of that dividend being declared.

I took no active part in the Trusteeing of the stock of the Louisville Trust Company and the National Bank of Kentucky. That was done by Judge Humphrey, I think, and Mr. Helm. As a director and a stockholder I did participate in that. I voted on the matters that came before the meeting when I was present. I continued to be a director of the National Bank of Kentucky until its close.

A. J. Carroll—Direct

I had shares of the National Bank of Kentucky to qualify me as a director. Those shares were physically in my possession. The shares of stock, the original shares of stock of the National Bank of Kentucky that I owned and held were in my possession.

I mean prior to the trusteeing. Those in the excess of the ten qualifying shares I exchanged outright for the Trustees' Participation Certificates. The other shares, I think, were still retained in my name but were delivered, I think, to Judge Quin, or somebody. A photostat of the receipt I obtained at that time, when delivering those shares, has been filed in the record. I got the dividend on those ten shares after that time.

I recall when Banco was first talked about. I don't remember the date but the matter was discussed early in 1929 at the meetings of the Board of Directors of the National Bank of Kentucky and the Louisville Trust Company. The matter was first broached by Mr. Brown and then discussed very fully at several meetings prior to the organization of the corporation.

The general purpose as expressed in those meetings was that it would be a very large, operating, financial institution. That it was to acquire stock of the National Bank of Kentucky, the Louisville Trust Company, and other banks, and that it was to do a large variety of things which were considered profitable that a bank could not do. Now, that, in general, was the idea.

I remember some of the things that it was talked about that Banco Kentucky would do. A good many of the things that are set out in section 3 of the first clause of the charter of Banco Kentucky.

It could underwrite securities, it could guarantee indebtedness, it could own and control stock in corporations of any character, it could acquire by purchase or otherwise

A. J. Carroll—Direct

any business and operate the same—its powers were very broad.

It was the intention, as expressed in those preliminary meetings and at the time of the last discussion we had prior to its actual organization, that Banco was to be a real operating company. That was the principal thing. It was, incidentally, also to have the power to hold stock, but it was to be an operating company with very wide powers.

I prepared the Articles of Incorporation. I do not think every one of the articles was discussed prior to the time I prepared it. I think the only articles we discussed were about—in a general way, what I have stated as to what the powers of the Company would be. There are a good many formal clauses that are customary in Delaware charters. It was to be a Delaware Corporation.

The Articles were not presented to the organizers at any meeting. I prepared the Articles and I submitted them, I think, to Mr. Helm and Mr. Vaughan, who went over them and approved them. But I don't recall whether they were ever presented to any meeting of the Board or not, I don't remember about that.

They were approved by Mr. Vaughan and Mr. Helm, we being the lawyers who had charge of that. After the Articles had been drawn, I left on the 10th of July, 1925, on my vacation to Atlantic City and I took the Articles of Incorporation. There had been some small preliminary matters that still remained to be adjusted, the nature of which I don't recall, but the understanding was that they were to telegraph me at Atlantic City when to file the Charter, and my recollection is that on the late afternoon or night of July 15th I received a telegram signed by Charles F. Jones requesting me to file the Articles. The next morning, July 16th, I went to Dover, Delaware and went to the office of the United States Corporation Company, taking the Articles

A. J. Carroll—Direct

with me, and went over them in detail with the secretary of that corporation, who had a very wide experience in the matter of Delaware corporations. They were approved by him as being the usual and customary form of Articles, and they were filed, and I paid, personally, the corporation tax and other taxes in connection with the filing, amounting to \$1,335, as I recall. It was afterwards repaid to me by Banco Kentucky.

At no time, or prior to the time, I wrote those Articles, was there any discussion of Clause 8 contained therein, to the effect that the private property of the stockholders should not be liable for the corporate debt.

I put that in because it was the usual and customary clause. I have practiced law, as I have stated, for forty-five years, and have drawn a great many charters. I never drew one in my life that didn't have that clause in it, and never heard of any that didn't have that clause in it, except banks and insurance companies, upon whom liability is imposed by statute. I certainly did not consider that the Banco-Kentucky Company was to be either a bank or an insurance company.

When I prepared the charter I thought the Louisville Trust Company and the National Bank of Kentucky were as sound institutions as there were anywhere. I did not have any discussion prior to the time I filed Banco-Kentucky's charter that the Bank was in a bad condition, or possibly in a bad condition. Certainly no such thing ever entered my mind.

I never heard any discussion of any kind that it would be a good idea or a good suggestion to get them to transfer Trustees' Certificates to a new company to get rid of any possible double liability that attended the Trustees' Certificates. No such thing was ever mentioned, and I certainly never thought of any such thing.

A. J. Carroll—Direct

I returned to Louisville on either the 1st or 2nd of September, 1929. I found what had been done in the meantime regarding Banco. That organization was in the process of being perfected, in the sense that it was getting ready to operate. I have seen the circular of July 19, 1929, since this litigation. I did not see that circular letter or prospectus of July 19, 1929, at any time prior to the formation of Banco. I don't recall that I ever saw that circular until after the Bank of Kentucky closed.

I did not find out why there was put in it the words "Plan of Reorganization." I didn't know anything about that. I was informed at the time I asked about that that it was to meet some tax suggestion that had been suggested, possibly by Miller and Chevalier, the tax lawyers in Washington, but personally, I don't know anything about that letter.

I transferred my Trustees' Certificates to Banco, except my qualifying shares. I did not make that transfer for the purpose of avoiding any double liability that might attach to them. I never dreamed of any double liability. At the time I made the transfer, I had no idea of any impending insolvency of either the Bank or the Trust Company. After the formation of Banco I continued as a director in the National Bank of Kentucky until its close. I thought the Bank of Kentucky was perfectly sound and solvent until either the day before its close, which was Saturday, or Sunday, when it did close. I had a small deposit in the Bank. I don't recall now what it was.

The bank regularly declared dividends quarterly from the time Banco was formed until its close. I never heard from any Examiner any criticism of those dividends. My recollection is that Mr. Neill attended one meeting of the Board of Directors shortly before it closed: I do not recall the date.

A. J. Carroll—Direct

Mr. Robert Neill, the Chief National Banking Examiner, never at any time criticized any dividend in any talk with me or in my presence that the Bank had declared and paid.

When I transferred my Trustees' Certificates to Banco-Kentucky Company there was no agreement that I would have any further control of any kind over the Trustees' Certificates which I had transferred. I never heard of any general agreement of that kind between Banco and persons transferring Trustees' Participating Certificates to it. I bought a thousand shares of Banco subsequently, very much to my regret.

Prior to the formation of Banco I had either twenty or thirty shares of National Bank of Kentucky stock. I don't recall the exact number. They were \$100 par, and I transferred all those shares, except ten which I retained as qualifying shares. I was also a director in the Louisville Trust Company. I had only ten shares in that. I had no more than qualifying shares. I subscribed for 1,000 shares of Banco I think after I returned from Atlantic City. It might possibly have been before. I paid \$25,000 for it by note.

While I was on the Board of the Bank, reports of examinations of the Bank were read by Mr. James B. Brown, the President of the National Bank of Kentucky to the Directors present at the meeting. There were eight officers as I recall it who were on the Loan Committee. The officers who were directors were present, and the officers who were not directors had always been invited to be present, or were told to be present, in order that any question concerning any loan that might arise could be answered. The cashier was on the Loan Committee. He was always present at those meetings.

Prior to the time the Bank closed I did not see any Bank-Examiners' reports. I never saw them afterwards. I never

A. J. Carroll—Direct

examined one. I was a defendant in the Bank Directors' suit, Atherton v. Anderson. In that case I testified, along with others, as to what was and what was not read from those reports. I was present on May 16th, 1930, when Mr. John S. Wood came before the Board. He was the only Bank Examiner I have ever seen at a meeting. Mr. Wood did not on that occasion criticize a great many assets of the Bank, running up into a million or so dollars.

My recollection is that Mr. Wood brought to the attention of the Board three items. One was this Van Camp Packing Company, which had been a refining company, and a note of Governor Fields and his wife, and one other note—Mr. Lewis Humphrey, as I recall. Mr. Wood did not indicate that there were a very large amount of assets in the bank that were bad. After he finished his talk I think Mr. Will Speed asked him a question as to whether or not what he had called the Board's attention to were the only matters in the Bank that he criticized. My recollection is that he said they were. The question of what Mr. Wood said at that meeting was testified about in the suit of Atherton v. Anderson, I think, by every witness who was a director.

I do not recall when the subscriptions to Banco were payable. It was sometime in the fall. A great many subscriptions were obtained.

Mr. Brown was an officer of Banco, the President, and was President of the National Bank of Kentucky. I think that there were some of the Directors of the National Bank of Kentucky who were also directors of Banco. I think that Mr. Jones, an officer of the Bank, was an officer of Banco. I am not sure. I took no part in the trial of the case against the Directors. I simply testified. I have taken no active part in this case; and that has been nearly ten years ago, and I just simply cannot recall a multitude of those things unless I am shown my testimony.

A. J. Carroll—Direct

Mr. ZurSchmiede was the Cashier of the National Bank of Kentucky at the time he was elected Secretary of Banco. I knew he had been Cashier of the Bank. Probably he resigned before he was elected Cashier of Banco, but I don't know—don't recall.

Referring to the minutes of the Bank of December 16th, 1927, June 1st, 1928, June 8th, 1928, June 22nd, 1928, and December 7th, 1928, at which meeting the minutes show I was present, no letter from the Comptroller was ever read to or presented to the Board during the entire time that I was a member of it.

I think that was fully gone into in the case of Keyes v. Akers, the Directors' suit.

A.—Yes, I think that was fully gone into.

99—Now, I will ask you to state whether the Board of Banco Kentucky Company ever authorized Mr. ZurSchmiede or any other person to hold Banco out as simply a holding company?

A.—None that I ever heard of; it certainly wasn't a holding company, entirely; it was only partially a holding company.

100—Did you ever see or hear of Mr. Bean or anyone else, or know of Mr. Bean writing a letter or letters to anyone calling attention to the fact that it was advantageous to buy Banco, or to take Banco, because it was free of double liability?

A.—I never heard of such a thing.

101—Or did you hear any other person—

A.—I never heard the question of double liability mentioned or referred to by any person.

102—After Banco was formed, did it function?

A.—Yes, it functioned.

103—What did it do?

A.—Well, it acquired stock in the various banks that have been mentioned; it acquired later a half interest in

A. J. Carroll—Direct

Caldwell & Company, but when the crash came Banco was, in a sense, in a formative condition; it never did get really started.

104—Prior to May, 1930, had it worked up any organization for the purpose of carrying out its plan of underwriting issues or selling the issues after being underwritten?

A.—It purchased a half interest in Caldwell & Company.

105—I mean prior to that time.

A.—Prior to that time I think Mr. Helm had some negotiations with Mr. Fleece to take charge of one of the departments in it, but I don't recall the entire steps that were taken.

Caldwell & Company was supposed to be, and I think it was—I knew something about it in a general way—was the largest investment banking house in the South, covering almost the entire South, and that they had a large, trained force of salesmen who were selling securities for Caldwell & Company, and that it would be a valuable adjunct to Banco Kentucky Company in disposing of any securities that it desired to sell.

Mr. Marx: I thought it would be shorter not to make specific objections, because some of them Your Honor has ruled on. I will just make a general motion now to strike out all the testimony on the ground that it is incompetent, irrelevant and immaterial, and contradictory of the written evidence, and in many cases, of the stipulated evidence; that it is the expression or conclusion or opinion or hindsight rationalization of events ten years ago that the witness now gives his opinion about.

The Court: Certain of the testimony was objectionable, but I will overrule your motion as a whole.

A. J. Carroll—Cross

On Cross-Examination by Mr. Marx Mr. Carroll testified as follows:

I have no recollection of a letter written to me at 3411 Pacific Avenue, Atlantic City, known as Plaintiff's Exhibit 24-2, on July 20, 1929, which enclosed the circular letter of July 19, 1929.

I sent the telegram to Mr. Jones, known here as Exhibit 24-1, under date of July 17, 1929, which I said "Corporation fully organized. . . . Send copy of prospectus here." I had completely forgotten about it. That refreshes my recollection but I don't know what that prospectus was, or what was enclosed. I evidently knew there was a prospectus when I sent the telegram. The telegram so stated. The telegram says I asked him to send the prospectus to me.

On July 20th, three days later, Mr. Jones wrote to me "Enclosed herein find letter which was mailed to all stockholders today. Everything is in fine shape, and in my opinion will go over big. With best regards, Yours very truly." That is what that letter states. I don't know what was enclosed in it. I assume that I got such a letter. Now, what was in it, I have no idea.

You show me the original of Plf's Ex. 24-3 and ask if that, or a printed counterpart of that exhibit, was not enclosed. I can only repeat that I haven't the slightest recollection of this having been sent to me or my having read it. I would say that this exhibit was sent. The letter says it enclosed a copy of the circular sent to all stockholders yesterday. It might have been.

My name is printed on this circular, but as I stated, this circular was prepared during my absence from the City and I knew nothing about it at the time it was prepared. I didn't know a thing about authorizing them to sign my name to that prospectus.

A. J. Carroll—Cross

I testified that I had never seen this word "Reorganization" and didn't know that it was being used in connection with this plan until after my attention was called to it when the Bank failed and this letter was brought to my attention. My signature appears on Plf's Ex. No. 166, dated September 3, 1929. I also wrote my address underneath it. That is in my handwriting. It is dated September 3, 1929. Now, referring back a moment, Mr. Marx, I don't think I stated positively that I had never seen that. As I recall, I think I said I didn't recall anything about it. Actually, I did see that letter. I signed that letter. I am referring to the letter of September 3rd, 1929.

The first paper appears to be a subscription blank, and the second is a subscription. I never remember, I repeat, ever seeing that letter of July 19th.

You call my attention to the language "Subscription to shares of the Banco Kentucky Company under the Reorganization Plan as outlined in the letter to the Trustees, dated July 19, 1929," but that doesn't correct my testimony at all in connection with the reorganization plan.

I told you I didn't know anything about the reorganization plan; that I wasn't here and that I supposed that the word "Reorganization" had been put in there to meet some tax question raised by Miller and Chevalier.

When I signed this, if my attention was directed to it at that time and if I read it, I suppose my attention was directed to the fact that there was a plan of reorganization which was outlined in the letter of the Trustees dated July 19, 1929. I had entirely forgotten all about it. I suppose I read that document, undoubtedly so, but that word "reorganization" certainly made no impression on my mind. I knew perfectly well what Banco was organized for. My attention is called to the fact that the last two sentences, above my signature say, that "the stock is to be fully paid

A. J. Carroll—Cross

and non-assessable under the terms of the reorganization plan as outlined in our letter of July 19th, if, when, and as such Plan becomes effective as therein provided."

I suppose I saw that when I signed the document.

Plf's Ex. No. 167, dated Sept. 3, 1929, bears my signature. I wrote the address, too. Certainly, the whole thing; I subscribed for 1000 shares of Banco Kentucky stock. It has the words "Plan of Reorganization" in it, yes.

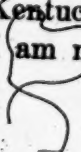
You show me Exhibit No. 168. I signed that document and wrote the address. It is dated Sept. 3, 1929. My recollection is that I was Trustee for my sister-in-law, Miss Holz, who had a few shares of that stock. That is my recollection. She had twice as many shares as I had. No, she did not. She had 64 Trustees' Participation Certificates. I think I had more than 30 Trustees' Participation Certificates. I don't recall the number; I had whatever the amount was of my excess stock over ten in the National Bank of Kentucky. I exchanged all I had except ten qualifying shares. I don't remember that thirty was all I had.

When I signed Plf's Ex. No. 166, I said that I exchanged thirty shares of Ten Dollar par Trustees' Participation Certificates. I assumed those were all I had. Mrs. A. J. Carroll was my wife. This letter written on her stationery dated July 21st is all in my handwriting. The attached clipping was enclosed with that letter.

Plaintiff's Exhibits Nos. 166, 167, 168 and 169 received in evidence over defendant's objection.

As a Trustee, I did not sign that document without reading it. I expect I read it. I am not in the habit of signing things I don't read.

I assume the Board of Directors of the National Bank of Kentucky employed me to incorporate Banco Kentucky Company. I don't recall. I think Mr. Brown—I am not sure.



A. J. Carroll—Cross

I remember I was called as a witness before the Jefferson County Grand Jury in the March term, 1931. In 1931 my memory of those matters would be very much fresher then than it is today. I was there asked "At whose solicitation did you prepare the charter of Banco Kentucky Company" and I answered

"At the solicitation of and under the instructions of the joint boards of the National Bank of Kentucky and the Louisville Trust Company, they having been unified. The directors in both were directors in the Banco Kentucky Company. The organization was first discussed in May or June of 1929 and that was discussed at several meetings before the joint boards there and they then concluded or decided to organize this corporation."

That refreshes my recollection. I assume that statement was correct. My recollection then would be better than now.

The next question there asked me was "You were decided upon as the lawyer to prepare it?" and I answered, "They asked me to prepare the charter, which I did, and I took the charter with me on my vacation and on the 15th of July Mr. Jones telephoned me to go down to Dover and file it, the understanding being when I left that when they transacted a number of other preliminary matters, I was to take the charter with me and file it, which I did on the 16th day of July, 1929." That is exactly right.

172—Now, Mr. Carroll, of course, you knew then, when you went down to Delaware and took this charter with you, that this company was intended to hold bank stock, didn't you?

A.—I knew that it had the power to hold bank stock, and I also knew it had the power to transact a very large variety of other classes of business.

A. J. Carroll—Cross

173—Limit yourself now to the question I am asking; I will come to the other in a minute: You knew when you prepared this charter and took it and submitted it to your clients, and then took it down to Delaware, that the Banco-Kentucky Company for which you were preparing a charter, was intended to hold bank stock, didn't you?

A.—Yes, among other things.

174—You knew that it was intended to hold a substantial majority of the stock of the National Bank of Kentucky, didn't you?

A.—Yes, I think it was.

175—And you knew that it was intended to hold a substantial majority of the stock of the Louisville Trust Company, didn't you?

A.—Yes.

176—And you knew it was intended to sell stock in the Banco-Kentucky Company and use the proceeds, in part at least, to purchase the stock of additional banks, didn't you?

A.—I knew that it had—it was the intention to acquire stock in other banks, and also its intention to acquire stock in any other corporation, when it got organized, and that it was its intention to engage in a very wide field of business enterprise.

177—I am limiting my question now, for the present moment, to bank stocks, and regardless of what other things it may have been intended to do, one of the things you do know definitely it was intended to do was, in addition to owning the stock of the two banks here, the National Bank of Kentucky and the Louisville Trust Company, it was intended to acquire, either by outright purchase or exchange of the holding company stock, the stock of other banks in the Ohio Valley?

A.—Of other banks and other corporations that were not banks.

A. J. Carroll—Cross

178—I understand that that is your testimony, but I want to direct my question first to the banks; so, you knew definitely that it was the intention and purpose that this new company that you were organizing was going to hold the stock of a chain of banks, didn't you?

A.—I knew that it was contemplated that it would acquire stock in several banks in the Ohio Valley.

179—In addition to the stock of the two banks that were causing it to be organized?

A.—Yes.

180—Now, then, you said something to the effect that you did not know anything, this morning, about its being called a holding corporation: I want to refresh your memory on that point; in this same Grand Jury, wasn't the very next question that was asked you, and your very next answer after those I have read to you as follows: "What was the nature of the Banco Kentucky Company?", and didn't you say:

"It was a holding company with very broad powers. Its charter powers are very broad as is the case in practically all Delaware Corporations, and it was primarily organized for the purpose of acquiring the majority at least of various banks, the Louisville Trust Company and the National Bank of Kentucky being the first ones."

Didn't you make that answer?

A.—I did make that answer, and further in that same testimony, and in the testimony in the Criminal Court, I very much broadened the definition of a holding corporation, and of the business the corporation was to do.

181—That answer was correct?

A.—Yes. I made it.

182—You not only made it, but since it was you who made it, it was correct?

A. J. Carroll—Cross

A.—Yes, I suppose it was correct; that was intended.

183—I want to call your attention to your testimony in a suit which bears the name, as the title of the case, Anthony J. Carroll and others plaintiff, vs. The Chemical Bank & Trust Company, No. 205223, in the Jefferson Circuit Court, Chancery Branch, First Division: You testified in that case, didn't you?

A.—I haven't the slightest recollection of there ever having been such case.

184—I will direct your attention first to what the case is; that case was a case you brought as one of the members of the Executive Committee of the BancoKentucky Company to have a receiver appointed for the BancoKentucky Company—do you remember that case?

A.—Yes, I remember. I did not prepare the case and did not appear in Court in connection with it.

185—Some questions arose as to the purchase by the BancoKentucky Company of the Murray Rubber Company debentures and the participation in the Lewis C. Humphrey note from the National Bank of Kentucky: Do you remember that question?

A.—I remember that there were such notes, and one of them Mr. Wood mentioned in his appearance before the Board.

186—You remember subsequently the BancoKentucky Company took those notes out of the bank?

A.—Yes.

187—And whether or not that was a proper thing to do was in question in this case to which I have called your attention?

A.—I have no recollection of that case in the world.

188—You remember you gave your testimony in Mr. Castleman's office, Mr. David Castleman?

A.—I don't remember it, but if it shows I did—I did.

A. J. Carroll—Cross

189—You remember Mr. Kasfir here examined you on cross-examination?

A.—Oh, yes, I do remember now.

190—Do you remember he asked you these questions—he asked you whether you participated in the formation of Banco Kentucky, and your answer was “I drew the charter for it, yes. Q. 27—What was the purpose of the organization of the Banco Kentucky Company?” and didn’t you answer: “Just as stated in that charter, to acquire stock in these other institutions as a holding company. Q. 28—As a holding company its primary purpose was to own and control a chain of banks?” and didn’t you answer: “Yes, I think that was the reason.”

Didn’t you make those answers?

A.—I assume I did, if they are there.

191—Since that was your evidence, your testimony in that case, that was true, was it not?

A.—That was one of the purposes for which Banco Kentucky was organized.

192—You said here and you said before the Grand Jury that that was its primary purpose, didn’t you?

A.—I have no recollection of having stated that before the Grand Jury, and as I said, in my testimony before the Grand Jury, and in the Criminal Court on the trial of Mr. Brown, I stated what the broad purposes of Banco Kentucky were in addition to the right to hold stock.

193—Of course, there was no question at issue of any stock assessment when you were examined before the Grand Jury, was there?

A.—On Banco Kentucky Company stock?

194—Yes.

A.—Why, certainly not.

195—And there was no question of a stock assessment involved when you were testifying on this Murray Rubber Company note, was there?

A. J. Carroll—Cross

A.—There was not.

196—And in those two cases, where you testified, didn't you say that the primary purpose—

The Court: He said he did.

197—(Continuing) —of the organization of the BancoKentucky Company was, to quote your own words, to act as a holding company, and its primary purpose was to own and control a chain of banks?

The Court: He stated that he said that. Let's just ask the questions once.

198—Of course, when you used the term "holding company" in those two instances, you knew, probably as well as or better than any other lawyer in Louisville, what a holding company meant; didn't you?

A.—No, I don't suppose I did.

199—Were you not general counsel for the American Turf Association?

A.—Yes.

200—Didn't you organize it as a holding company?

A.—I did, and that was a holding company with absolutely no other powers and no other business in which it was ever to engage, it is strictly a holding company, very widely different from the BancoKentucky Company.

201—You had organized that prior to the organization of BancoKentucky Company?

A.—Yes.

202—So that when, in your previous testimony, you called the BancoKentucky Company a holding company, you knew the meaning of that word?

A.—I knew the meaning of holding company, yes.

203—Now, you organized other holding companies, didn't you?

A.—I think one or two.

I do not know that BancoKentucky was not qualified to do business in Kentucky. I recall that when I sent the

A. J. Carroll—Cross

charter back to Louisville from Dover my recollection is that I wrote Mr. Jones a letter enclosing the qualification slip or at least told him to qualify in Kentucky, and I assumed, of course, that had been done. I don't know it never qualified. I wrote them from Dover and told them to qualify in Kentucky, and how to do it.

I know, as far as being an operating company, was concerned, that it had not a single, solitary paid employee. It had not got under way—of course, not. I know it had no separate office at that time. I don't know about its not having separate correspondence files. It had people acting as officers, but whether they were paid or not, I don't recall. I don't think they were. It had no employees that I know.

I recall that I testified in the case of *Anderson v. Akers*. My attention is directed to my examination on May 31, 1932, and particularly my cross-examination by Mr. Heyburn.

215—Just to refresh your recollection of the fact that you have always maintained that this was a holding company for bank stock, I want to ask you if these questions were not asked you and these answers given—

Mr. Crawford: I object.

The Court: Objection sustained; that is a conclusion that you may argue—you may draw that inference.

The Witness: I will say I never so maintained.

The Court: Ask him a question but don't make a statement.

The Witness: I have never wholly maintained such a thing.

216—Let's see about that. I will direct your attention to these questions and answers by Mr. Heyburn: "How long was the proposal to organize the Banco Kentucky Company discussed in the Board of the National Bank of

A. J. Carroll—Cross

Kentucky before it was finally determined to go ahead with it? A.—My recollection is for months—I don't know the exact time, but it was discussed on a number of occasions.

Q. 6—What was the purpose of organizing the BancoKentucky Company? A.—The purpose of the organization of the BancoKentucky Company was to be a holding company for the purpose of acquiring the control of the stock of the National Bank of Kentucky and of the Louisville Trust Company—of the participating certificates—and of banks in Cincinnati, Covington, and scattered around in various other sections of the Ohio Valley, Indianapolis, and the expectation was at one time to enter Chicago. The purpose of that bank was that the company could be organized and could acquire a control of the stock in these various institutions, that they could withdraw from the Federal Reserve System and that the BancoKentucky Company could act as reserve agent for them, and in addition to the bank matters the charter of the BancoKentucky Company gave various large powers that the banks didn't have"—

A.—Yes.

217 (Continuing)—“It could do many profitable things that banks could not do. It could underwrite securities, it could do any number of things that banks could not do, and it was thought that by the organization of that company, and it was confidently believed at the time, and but for the crash it would have been the strongest financial institution or organization in the entire South.”

Now, that was your answer, wasn't it?

A.—Yes.

I assume my memory was clearer and fresher at that time than it is now. I paid no attention, as I said, to those details. The answer which I gave in that case was correct and true. I was asked in that case if I prepared the charter for BancoKentucky Company and I said I did. I was asked

A. J. Carroll—Cross

if I had all these various powers in my mind when I prepared the charter and I said yes, they were set out in the charter.

Mr. Crawford asked me if Mr. ZurSchmiede had any right to hold out the BancoKentucky Company as a holding company when he filed the application of BancoKentucky Company to list its securities on the Chicago Stock Exchange and my answer was "No."

223—Let me refresh your recollection: It wasn't Mr. ZurSchmiede who prepared those papers describing it as a holding company, but you?

A.—I?

224—Let me call your attention to this, before the Grand Jury, March term, 1931. When you were testifying this question was asked you: "I believe BancoKentucky stock was subsequently listed on the Chicago Exchange? A.—I know it was listed on the Chicago Stock Exchange because I prepared the papers."

Doesn't that refresh your recollection?

A.—Yes, but my recollection is also that I did not prepare the papers except to take up with the legal representatives of the Chicago Stock Exchange in Chicago—I have forgot the name of the firm now—the mechanics of qualifying this company on the Chicago Stock Exchange.

225—Those are the mechanics——

A. (Continuing)—But I did not prepare the papers. That is my recollection.

226—You prepared the papers. It says here: "I know it was listed on the Chicago Stock Exchange because I prepared the papers."

You prepared the papers in order to have it listed on the Chicago Stock Exchange?

A.—I said I did not prepare the papers. The papers, I think, were prepared by Mr. ZurSchmiede or someone else;

A. J. Carroll—Cross

all I did was to take up with the legal representatives of the Chicago Stock Exchange the question of qualifying this corporation.

227—Now, Mr. Carroll, you don't deny you made that statement before the Grand Jury?

A.—Certainly not.

228—And also your recollection in 1931 was clearer and fresher than it is now?

A.—No—well, I assume it might have been, but what I meant to state there was that I had with the lawyers, as I have stated—

I do not know that when BancoKentucky Company filed its income tax return with the Federal government it described itself as a holding for bank stock.

Before the Grand Jury I was asked about some bonus which was said to have been paid to Mr. Mosler to get him to exchange his Brighton Bank stock for BancoKentucky stock and I stated that I didn't know about that and then I answered:

"I know this statement was not made only once, but repeatedly, in connection with every bank, that there was not a cent of commission, not a penny of expense outside of the audit, that those trades were made without costing BancoKentucky Company a single dollar in the way of commission, fees or charges to anybody."

"... In addition to that no salary was ever paid to anybody connected with the BancoKentucky Company, not even to Mr. ZurSchmiede who did all the work. He never got a cent. No officer got a cent and no director ever collected a fee—never a penny, it was always boasted that it was a corporation that was operated without a cent of expense."

I made that answer and it was true.

The people who were working for the National Bank of Kentucky might have done this work. I assume Mr. Zur-

A. J. Carroll—Cross

Schmiede was paid only by the National Bank of Kentucky. I know that as a director. I don't know that the bookkeepers who kept the books that were kept by Banco were the bookkeepers of the National Bank of Kentucky. As I stated, BancoKentucky had not got under way. It had not been fully organized.

I knew when I was drawing the charter for BancoKentucky Company that bank stocks are subject to double liability. I knew in substance what the terms of the law were. I had never previously incorporated any holding company which was intended to hold bank stock.

I made no detailed investigation in Delaware as to the charters of holding companies incorporated under the laws of that state which were intended to hold bank stock. I never heard of the Union Commerce Investment Company and didn't know that that corporation's charter on file in Delaware contained in Article 8 a provision for its stockholders' liability for any assessment on bank stock held by the corporation. I didn't know that the corporation owned the stock of the National Bank of Commerce of Detroit and the Union Trust Company. I can only repeat I never heard of it and knew nothing in the world about it.

I did not read and was not familiar with the fact that bank stock holding companies or corporations were being formed in various parts of the United States, which were intended among other things, to hold bank stocks. I don't know that I ever learned it except in forming—in organizing BancoKentucky. I knew it was to acquire and hold bank stock and also knew it was to engage in various other enterprises, and was an entirely separate and distinct corporation and not distinctly a holding corporation. I have said I never knew of any such other corporations or examined any such charter. I have never examined the charters of any holding company that was going to hold stock,

A. J. Carroll—Cross

among other, of banks. My recollection is, if you will look at Article 3 of the charter you won't see "bank" or "bank stock" in it. I never examined the charter of a corporation that was designed or intended to hold primarily bank stocks.

Plaintiff's motion to strike out the answer of the witness, that this was the usual customary form used in the charter of corporations of this character, since the witness now says he never examined the charter of a similar corporation, was overruled.

Before the Jefferson County Grand Jury in November, 1930, and February, 1931, I was asked whether BancoKentucky would have been formed if Louisville Trust Company and National Bank of Kentucky had not been purchased by it and I answered, "No. They were to be a unit." That was true.

I knew that holders of bank stock were subject to double liability, but it never entered in my mind that holders of BancoKentucky stock would be subject to liability, in as much as it was an entirely separate corporation and was the owner of the stock.

261—Then you did have it in your mind that the holders of stock of the BancoKentucky Company, because it was a separate corporation, were not going to be assessable?

A.—I did not have it in my mind.

262—Isn't that the explanation that you just gave the court, that your idea was that the holders of this holding company stock would not be subject to double liability?

A.—I think I made no such answer. What I said was that I knew the owners of bank stock, the holders of bank stock were subject to double liability, which answered your question. Then I went on to state that it never entered my mind that the holders of BancoKentucky stock would be subject to double liability. That is a legal question I don't want to argue.

A. J. Carroll—Cross

263—You knew the holders of the Trustees' Participation Certificates were subject to double liability, didn't you?

A.—No.

264—You didn't know that?

A.—No.

265—Doesn't it provide so in the Trust Agreement?

A.—Yes, it does.

266—Doesn't the face of the Trustees' Participation Certificates provide that the holder of the Trustees' Certificate agreed to respond to that liability?

A.—They were the owners of the stock.

267—What did you mean by your answer that the holders of Trustees' Certificates were not subject to double liability?

Mr. Crawford: He didn't say that. He said he didn't know.

A.—I said I didn't know, and then, in answer to your second question, I said I did.

268—In other words, you mean your first answer was wrong?

A.—No, my first answer might not have been responsive. I was a director on all these Boards, on the Board of the Louisville Trust Company up to January 13, 1930, I think it was, when the Boards were separated. I was at all times a member of the National Bank of Kentucky Board and a member of the Banco Kentucky Board, from the time it was organized until we caused it to go into the hands of a receiver. I was chairman of the Executive Committee of the Banco Kentucky Company, which was formed just as at the last phase.

I have never read the petition introduced in this case as Exhibit No. 66, even though it bears my name.

I thought you meant the petition in the suit at bar. Yes, I know about the petition to have the Banco Kentucky Com-

A. J. Carroll—Cross

pany placed in the hands of a receiver. I knew about it and approved of it. I think I was also a member of the Advisory Committee to the Trustees. I am not sure of that. If the record shows I was, I was. But I simply have no independent recollection of it. I don't know that I was a member of the Advisory Committee by reason of being a member of one of the Bank's Board. I know I was a member of the Bank Board and the Banco Kentucky Board and I was Chairman of the Executive Committee that was formed towards the end. I have no recollection whether I was on any other committee or board.

I think the Trustees who held this stock voted it as the Advisory Committee directed. If the record shows that by the terms of the Trust Agreement the Board of Directors of the Trust Company and the Bank were the Advisory Committee, they were. I have no independent recollection of anything in that Trust Agreement. I don't know that I was a member of the Advisory Committee. I don't recollect whether I was one of the men responsible for voting all the stock of both the Trust Company and the National Bank. If the record shows I was, I was.

I remember you examined me on cross-examination in the case of Louisville Trust Company v. The National Bank of Kentucky, a case growing out of the dispute as to the ownership of 421 West Market Street.

295—Do you remember my asking you these questions, Mr. Carroll: "Q. And you were the owners of these two companies?" referring to the two banks, the Louisville Trust Company and National Bank of Kentucky,—“at that time, and your answer: “Banco!” and I said “Yes,” and your answer: “They owned the control system.”

A.—I don't know what that means, if you mean whether or not—

296—I am not asking you—I am asking you if you made that answer?

A. J. Carroll—Cross

A.—I don't know whether I made it or not. If it is there I did.

The Court: It is there. He said if it is there he did.

A.—I will accept your statement, yes, that they owned the control system. I don't know what that word "control" means. That is very probably a misprint.

297—See if you didn't mean this when you said control system: BancoKentucky Company had more than ninety-five per cent—about ninety-five per cent of the Trustees' Certificates.

A.—It had a majority, a large majority of the Trustees' Certificates. I don't recall that. If the record so shows it was, and I was a member, as I have said, but I don't remember—

299—(Interrupting.) Therefore, through that system whereby the BancoKentucky Board had stock control, and through the Advisory Committee the voting control, Banco-Kentucky Company was the control system by which these banks were operated by its stockholders?

A.—I still say that the word "Control"—

300—(Interrupting.) That is the fact. You had the control, didn't you?

A.—Oh, we had control; we had control of the banks.

301—That was the system by which you had control, wasn't it?

A.—If that is what it means, yes.

I had no part in the denationalization question at all. Years have dimmed my recollection as to small details. That is my signature to Exhibit 8 which is entitled "Consent of Advisory Committee." That is an order to the Trustees to-denationalize the National Bank of Kentucky, signed by me. As I said, if the records showed I was a member of the Advisory committee, I was a member, and this shows that I was. I took no part in any steps taken in

A. J. Carroll—Cross

connection with the denationalization of the banks. That, in my recollection, was attended to by Mr. Helm and probably Mr. Vaughan, who were the lawyers, and I had no part in it, as a lawyer. I might have had a part as a director and member of the Advisory Committee and I signed that paper. It was a part of the Banco plan that we would denationalize the National Bank of Kentucky. That was considered, I am quite sure, but I don't remember the details about it at all.

In my testimony in *Akers v. Anderson* I was asked this question. No. 9, "As part of that Banco Kentucky Company plan was it contemplated that the National Bank of Kentucky would denationalize?" and my answer was, "That was considered and discussed that it would denationalize and obtain a charter as a state bank." That was correct.

You show me Plf's Ex. 34-2, a letter of September 16, 1927, addressed to the Comptroller of the Currency and ask if that is my signature. It is, and I remember all about this. I signed it. I never saw the report. I will state the facts about that matter were these: That Mr. Jones came to my office with this letter and stated that he had received a communication from the Comptroller about some of the accounts in the bank that had already been satisfactorily adjusted, and it was merely a routine matter and presented to me this letter that had been signed by a good many of the other directors, and I signed my name to that letter but I never saw the report to which it refers.

The witness: Your honor, I would like to extend my answer a little bit to that question. Mr. Jones further explained to me that it was merely a routine matter, that it was no criticism of anything about the bank's affairs but that it was a routine matter about some of the stock in the bank that might have been over-loaned. Loaned in excess of the legal limit.

A. J. Carroll—Cross

Right above my signature to this thing—it reached a grand total of \$966,797.00. Mr. Jones explained that that had already been remedied. I would not consider that loans of \$966,000 in excess of the limit—more than 20% of the capital of the bank—was a routine matter. I happen to know about these particular loans. They were all as good as gold. I will not say the Consolidated Realty Company loan was as good as gold. I do not know what the losses of the bank on that item were. I don't know that is one of the principal items there. If you let me look at it, I will see what the loans were. No, I was referring to this Kentucky Jockey Club loan which I knew all about. That was a loan of \$530,000 and some odd dollars. But I knew that that loan was perfectly good. I don't recall about these other loans. I don't think they were good, but the statement was made to me that they had been adjusted and brought within the legal limit. I have said no less than three or four times that this letter did call my attention to the fact that there was correspondence with the officers of the Bank relative to the Bank's condition and its examination just previous thereto.

There is no doubt in my mind that the officers of the bank were fully advised as to the condition of the bank at all times. They should have been. Whether they were or not, I don't know.

Mr. Brown, the President of the Bank, had the National Bank Examiner's report in his hands at the time he purported to read to us certain sections of it. He was the principal originator or proponent of the Banco Kentucky Company. I think the idea originated with Mr. Brown. The Board of Directors delegated to Mr. Brown the arrangement of the details for setting this program for the organization of Banco Kentucky under way. At that time the Board had the utmost confidence in Mr. Brown. The Board

A. J. Carroll—Cross

delegated him the authority and duty to work out the details and cause the organization of Banco Kentucky company and report to the Board. I was present at the meeting June 7, 1929, when the following resolution was passed:

"Mr. Brown's proposition to form a new company with a proposed capital of \$20,000,000 organized to own stock of other corporations, all, or any part, buy and sell securities, original and refinancing, etc., was submitted to the Board of Directors, and the Board expressed themselves as favorable, and on motion duly seconded and unanimously carried, the President was authorized to proceed along the lines outlined."

It doesn't say anything here about his reporting back to us, but he was to report back. That resolution doesn't say that. It was adopted and he was to report. The resolution refers to Banco Kentucky Company.

The purchase price of the Banco stock for which I subscribed was \$25,000—1000 shares at \$25.00 a share. I borrowed the entire amount from the National Bank of Kentucky and put up the 1000 shares of Banco as security, plus 100 shares of Standard Oil of Kentucky at the time I made the loan. At the time the bank closed I had repaid \$2,200.00.

With reference to the Caldwell deal,—I was one of the lawyers, in a small way, that worked on that contract. I attended a meeting at Mr. Brown's house at which Mr. Caldwell was present. Mr. Helm was there, I knew, and Mr. Vaughan. I am not certain as to whether Mr. Dodd was or not. The matter was discussed there, but the modifications of that contract were drawn by Mr. Vaughan and Mr. Helm. I had no part in that. I knew that Caldwell had an interest in banks. I don't know that Rogers Caldwell wholly owned Caldwell & Company. I don't think it was so represented to us. I don't recall that. I think it was a corporation and that there were other stockholders. Who they were and what amount they held I don't know.

A. J. Carroll—Cross

At that time BancoKentucky Company owned nothing but Bank stock and an infinitesimal amount of Union Central Life Insurance Company stock. As I have stated, BancoKentucky never got under way because the crash came right at that time. The crash which I am talking about is the stock market crash in October, 1929. I don't know about our acquiring "plenty" of banks after that and I don't remember the date they were acquired. We acquired the Central Savings Bank and Trust Company on December 9, 1929, after the stock market crash, if that is the date. We acquired the Peoples Liberty Bank of Covington on December 30, 1929, if that was the date. We acquired the First National Bank of Paducah on March 19, 1930, if that was the date, and the Ashland National Bank on April 15, 1930, if that was the date. I will say yes, we did. We acquired the Security Bank in Louisville on April 26, 1930. As late as Sept. 27, 1930, we acquired the Mechanics Bank and Trust Company of Paducah, if that is the date.

I don't suppose anybody thought that the financial crash would reach the tremendous and disastrous proportions it did: We thought things would right themselves, and that business would come back.

I don't remember that at the time we made this deal, with Rogers Caldwell, or Caldwell & Company, that our assets were wholly invested in bank stocks, and that we had no cash.

We had no audit made of Caldwell & Company. The facts were these, as I recall them, that Mr. Brown stated he had made an investigation of Caldwell & Company. When the matter of acquiring an interest in Caldwell & Company first came up, Mr. Brown suggested that, and it was considered, and he said he wanted to investigate it further. At a subsequent meeting of the Board he said

A. J. Carroll—Cross

that he had investigated it further, and he read from a statement showing the assets, liabilities and net worth of Caldwell & Company, the net worth being \$11,000,000 or \$12,000,000, and Caldwell guaranteeing \$9,000,000, and he made the further statement that those figures had been obtained from an audit made by Price, Waterhouse and Company, whose audit I would accept on any proposition. Those were the facts about that.

I don't know that those were the same people who made the audit of McKesson & Robbins. I never saw the audit of Price, Waterhouse & Company. Mr. Brown didn't have any audit of that company there at the meeting. Mr. Brown said Caldwell told him, and then he read those figures that he said were obtained from an audit made by Price, Waterhouse & Company, and I, at that time, had confidence in Mr. Brown and I believed his statement. I don't know whether he got the figures personally from Price, Waterhouse & Company or claimed to get them from Price, Waterhouse. He said they were figures taken from an audit made by Price, Waterhouse, of Caldwell & Company. Where he got them and how he got them, he did not state, and I don't know. I don't recall that anybody asked him.

Rogers Caldwell objected to an audit being made in advance of the deal being entered into, it was understood that before any dividends were to be paid an audit was to have been made of Caldwell & Company's business. My recollection is that they appointed a committee of the Board to do it. I was not on it. Mr. Helm and Mr. Vaughan were on the committee. I don't recall whether Mr. Brown was on it or not.

I really don't know whether Mr. Brown was a Director in every bank that Banco owned or held stock of. I know he was a Director of the Louisville Bank, but I don't know

A. J. C. roll—Cross

as to the outside banks. I do not know that the committee never met. I do not know that a valuation was never made. I meant to say that so far as I know, no audit was ever made. I don't know whether the Committee met or made any valuation. I have no knowledge of that whatever.

I didn't know at the time we made the negotiations with Caldwell that the stock was worthless. I know now that it was worthless. 200,000 shares of Banco stock were held out at the time. I think that an additional 200,000 shares were held as a guarantee against the making of the audit, as to what was to be disclosed by the audit. That is my recollection. I don't remember when that occurred.

I knew that Caldwell was going to take the Kentucky Wagon Works out of the Bank. I consider that it was a good thing to get rid of the Kentucky Wagon Works. I did not know how much the bank had invested in it. I thought it was somewhere about \$400,000, plus some few hundred dollars that is my recollection. I do not know that \$2,500,000 in stock of Banco Kentucky was the amount turned over to Caldwell & Company. What I know was this,—that at practically every meeting of the Board of Directors of the National Bank of Kentucky questions were asked about the Kentucky Wagon Manufacturing Company. It was stated that that debt had been charged down, is my recollection, to about \$400,000, that there were no overdrafts, that the concern was operating, that there might have been an overdraft to tide over some raw materials, and the question was asked at every meeting as to how that corporation was going along, and it was said in every instance that it was holding its own. Three of the Vice-Presidents of the banks, as I recall, were directors of the Kentucky Wagon Manufacturing Company to look after the bank's interests.

A. J. Carroll—Cross

There wasn't any doubt that they knew all about the Kentucky Wagon Works. They certainly knew all about it, but I didn't. The Board had delegated to them that job.

I signed statements of the condition of the bank, March 7, 1930, June 30, 1930 and September 24, 1930, if those are the dates. I know I signed two or three statements. I knew what I was signing, but it turned out I wasn't signing what was afterwards put into those reports, as I think I testified afterwards in the Keyes suit. In other words, that certain things were inserted in those reports after they had been signed. Mr. Brown inserted them, I assume, or at his direction. It must have been either he or Mr. Jones. Mr. Jones, I take it, would not have done it except at Mr. Brown's direction. Charles F. Jones was the Executive Vice-President of the Bank. He had been Cashier and was then elected Vice-President, and possibly at one of those meetings was elected Executive Vice-President, but I am not sure as to that. If any changes were made in the statement of condition they were by somebody, I don't know who fraudulently entered them.

Those officers of the Bank were chosen by the Directors. I suppose the Directors were chosen by themselves, as the Advisory Committee who had directed the voting of the stock of the bank.

I knew the Kentucky Wagon Works was owned by the bank. I knew that the BancoKentucky Company had acquired the Murray Rubber note or debentures and the participation in the Lewis C. Humphrey note at the insistence of the Chief National Bank Examiner. I don't remember the amount. I don't know that it was \$600,000 in cash. I don't recall that BancoKentucky had no money. I don't know that. I knew these two items were taken out of the Bank but I don't remember what was paid for them. I didn't know those items were worthless. I have no knowl-

A. J. Carroll—Cross

edge that I have testified on previous occasions that they were worthless. I may have but I certainly don't remember it.

I have no recollection of having testified on previous occasions that it did not make any difference whether the items were in the Banco Kentucky or in the Bank, because the same people owned both. If you will show it to me, I will tell you whether I answered or not.

I testified in a hearing before the Grand Jury which met to consider Banco Kentucky, February 23 to February 27, 1931:

"The Banco Kentucky Company owned all of the capital stock of the National Bank of Kentucky, and therefore, anything that was to the benefit of the National Bank of Kentucky would necessarily be beneficial to Banco Kentucky."

The reason for that is because if the ownership was common, anything that benefited one benefited both. I said I had no recollection of it. Now, that you produced it, I say yes, that is what I testified.

In the same answer I said this:

"Now, the arrangement made with the Kentucky Wagon Works was a very advantageous thing, not only to the National Bank of Kentucky, but ultimately to the Banco Kentucky, because it took out of the National Bank of Kentucky all of that indebtedness, and Banco Kentucky acquired from Caldwell & Company a hundred thousand shares of its own stock, which if that stock had been at the price it was then, would be largely more than the indebtedness of the Wagon Company, as it would be \$2,500,000."

That refreshes my recollection. I made that answer. It was correct.

I don't know that it was the ownership by Banco of the stock of the Cincinnati banks that caused the run on the

A. J. Carroll—Cross

Cincinnati banks. I don't recall whether I so testified or not. I testified about the Cincinnati situation, referring to the previous run in the summer time that had died down, and this came up and they, knowing that Banco Kentucky Company owned the stock in the two banks—a run started on them. I answered that, yes. That is correct, too.

I wasn't the author of the plan to physically merge the Louisville Trust Company and the National Bank of Kentucky. I know there was such a proposition, but I have no recollection of my having been the author of it. Probably they asked me to draft such a plan, and I might have drawn the plan, but what it was now, I don't recall. It was certainly designed and intended to save the banks.

With reference to how soon before the final collapse I started working on that plan, my recollection is now that I drafted that plan—I don't recall its terms—that I drafted that plan, and I think I submitted it to the Executive Committee, is my recollection, of the Banco Kentucky, and I think that was just before the banks failed, that that had not been conceived or considered until probably a day—I had not been working on it for about ten weeks before that. I think I drew that—the drawing of whatever the plan was I drew very speedily, in order to get it in in a last effort to save the banks. I was not the one who first proposed it at all. I don't recall how that came up. That was discussed and considered and I was asked to draw the plan, I think, by the Executive Committee of the Board of Directors of the Banco Kentucky, and I did, as speedily as I could, draw that plan, but it was too late.

The minutes show that I presented a motion on December 27, 1929, to increase the Banco stock from twenty million to fifty million. My recollection is that there were two prime motives in denying to the then stockholders their preemptive rights to subscribe for the new stock. These

A. J. Carroll—Cross

two motives were: First, that it was considered advisable to obtain as wide a distribution as possible of the Banco-Kentucky stock; and secondly, it was considered advisable to have in the treasury of Banco-Kentucky a considerable amount of that stock that might either be sold or be used in acquiring stock in other corporations of various character, not banks alone.

429—You say, "not banks alone," but including banks?

A.—Any corporations that it was considered advisable for the Banco-Kentucky to acquire an interest in.

430—Any corporations included banks, didn't it?

A.—It might have been banks and it might not have been banks, it was to be used in acquiring an interest, as I said, in banks, manufacturing corporations, or any other corporations.

Since the stockholders had preemptive rights we could not use it in that way to exchange for other bank stock because the present stockholders would have subscribed, in all probability, for all that increased stock. I think I was Chairman at that meeting at which that amendment was proposed, and I drew that amendment. I remember you asked me in the Building Case, about what we called the Carroll plan, this physical merger of the Louisville Trust Company and National Bank of Kentucky. You asked me, "Well, wasn't it in October?" and I said, "I think it was in October." I made that answer evidently. I don't remember what date it was. I know it was just before the failure of the banks. That trial was about five or six years ago, so probably the dates were fresher in my mind then than they are now. I have no recollection as to the time, as to the date.

I have no recollection now of approving the idea of lending money to employees of the Bank, to enable them to purchase the stock of the Banco-Kentucky Company for the

A. J. Carroll—Redirect

reason that I regarded that as a cooperative profit sharing. If that is said there, it is the fact.

I answered the question

"I thought all of those loans were good and well secured, and it was my idea that there could be no more desirable loans, if they were secured, as I thought they were, than loans to employees of the bank on a cooperative profit sharing."

That is what I thought, because I thought Banco would be a highly successful organization, and I wanted the employees of the Bank to get some benefit from it.

I was present at the meeting of the Board of Directors of Banco on Friday, September 27, 1929, Exhibit 23, when a motion was made, seconded and carried that

"Application be made to the Chicago Stock Exchange for the listing of 2,000,000 shares of the Common Stock of the Banco Kentucky Company and that W. T. ZurSchmiede" was designated "to appear before the Committee on Stock List of said Exchange with authority to furnish such information and to make such changes in said application, or in any agreements relative thereto, as may be necessary to conform with the requirements for listing."

I remember that, and that is what I said when I was asked that question today, that Mr. ZurSchmiede did it.

I assume that Plaintiff's Exhibit 74 entitled "The Chicago Stock Exchange, Application to list stocks," is the application that Mr. ZurSchmiede was authorized at all board meetings to sign and file.

Redirect Examination by Mr. Crawford

On redirect examination by Mr. Crawford, Mr. Carroll testified as follows:

I gave a deposition in Carroll v. Chemical Bank & Trust Company, December 21, 1937. The present suit was filed February 17, 1936, prior to my giving of that deposition.

A. J. Carroll—Redirect

Refreshing my recollection by reading paragraph 3 of Plaintiff's Exhibit 24, I wrote this letter to Mr. Jones, dictated it in the office of the United States Corporation Company after the charter had been filed. In that letter I stated:

"I also enclose statement of corporation to be filled out, signed by the President or Secretary of the new corporation and sent to the Secretary of State of Kentucky, together with a filing fee of \$1.00. When this is done, the corporation will be fully organized to do business in Kentucky."

Nothing else was needed in that respect to do business under the laws of Kentucky. That is all that is needed. I did not know that that had not been done. I assumed, of course, it had been done.

Banco Kentucky paid me for drawing the organization papers for Banco. I will state that on January 9, 1930, I received a check from Banco for \$12,500. That was stated to be in payment of attorneys' fees up to January 1, 1930. On the same day I sent a check for \$4,000 to Mr. Helm, a check for \$4,000 to Mr. Vaughan and a check for \$500 to Miller & Chevalier, and I retained my portion of the fee, \$4,000.

I was asked about signing some reports and referred to insertions in those reports. Those insertions were with reference to overdrafts in the Wagon Company. The issue, as to whether they were in there or not, was tried out in the Directors' Case. Testimony was offered on the subject, as I recall it.

The Murray Rubber Company transaction was when Mr. Neill was in the Bank, I think. It was long before the time that Mr. Neill was there. He was the last one to make an examination and the second Bank Examiner that had ever appeared before the Board.

A. J. Carroll—Recross

I was asked about a letter of September 16th referring to Consolidated Realty Company, and Jockey Club excessive loans. After I signed that letter I never again at any time while I was in the Bank heard of those two loans. Or any criticism of the Consolidated Realty Company or the Jockey Club. I was on the Board of the Bank when it purchased claims against the Wagon Company. That was for the purpose of acquiring title to the Wagon Company property. During the course of those proceedings I think other expenses were had in connection with that company. I don't remember what the amount of them was. I was also aware of the fact that there had been loans to National Motors and other companies either allied with or having to do with the Wagon Company. I did not know that there had been overdrafts. In that trade with Caldwell I don't recall how much had been charged off by the Bank. I don't recall what the original amount of the loan was, but my recollection is that it had been charged down to about \$400,000. I did know that there had been charge-offs but what the total amount had been, I don't know.

When Mr. ZurSchmiede was authorized to make the listing on the Chicago Stock Exchange I have no recollection of that particular listing having been before the Board, the particular statement to be filed.

Recross Examination by Mr. Marx

On Recross Examination by Mr. Marx Mr. Carroll testified as follows:

I don't remember the amount of the loss going to this item of Kentucky Wagon Manufacturing Company which I ascertained after the Bank closed or that the aggregate amount of notes and overdrafts in the Bank due to the Wagon Company item was \$2,368,453. I do remember it was largely in excess of what we had been told the amount was.

William S. Speed—Direct

I was a defendant in the case of *Anderson v. Akers*. The judgment against me for my dereliction of common law duties as director on the Kentucky Wagon Manufacturing Company item alone was \$99,283.57. Whatever the amount was. I do not know that figure.

I was held in that case responsible for losses incurred by the Bank on the Kentucky Wagon Manufacturing Company, the Murray Rubber Company, and Wakefield & Company for my dereliction of common law duties as a director, and for my violation of the Statute laws of the United States in the case of *E. B. Norman & Company*, for a total amount of \$2,311,644.72, individually. I have no idea that that was the biggest amount of any Director. I know it was more than I was readily able to pay.

William S. Speed,

called for Defendants, examined by Mr. Crawford, testified as follows:

My name is William S. Speed. I have lived in Louisville all my life. My principal business is the Louisville Cement Company. I am engaged in other businesses.

I was a director of the National Bank of Kentucky from 1919 on to the closing. I was on the Board when the stock of the Bank was trustee with the stock of the Trust Company. And when the sixty per cent stock dividend was declared. I was familiar with those proceedings.

11—Will you tell the Court why Banco was formed?

Mr. Marx: I object. I want to interpose a general objection on the ground that that evidence is incompetent, irrelevant and immaterial. It is an attempt to vary, alter or explain the written evidence, and is secondary evidence of which the best evidence has been produced here in written form over the signature of the witness and his

William S. Speed—Direct

fellow officers and directors, and further, that it constitutes an attempt, nine years after the event, to explain or rationalize the things that the witness did, which are set forth and recorded in records made, not by the Government, but by the defendants themselves in this case. I interpose these objections generally, to avoid the necessity of interrupting. If I may understand that they are continued to each and every question, it will avoid the necessity of interrupting; I sort of trust myself to Your Honor's hands, as Your Honor sometimes sustains objections *sua sponte*.

The Court: Let the objection be overruled. Let it be understood that that objection applies to all questions which the witness may be asked about the reasons —

Mr. Marx (Interrupting): I thought, if Your Honor could let it be understood generally —

The Court: I am not going to let it be general, but with reference to the reasons which this witness may state were in the minds of the directors or those taking a leading part in the forming of BancoKentucky.

Mr. Crawford: I want to show what was discussed, not what was in their minds.

Mr. Marx: I further object on the ground that that was merged in the result of their deliberations, and that prior negotiations, antecedent to the adoption of the resolutions forming the charter, the contracts, the subscription and so forth—that all antecedents are merged in the final documents and speak for themselves, and are clear and unambiguous.

The Court: The objection is overruled.

The BancoKentucky Company was formed for the purpose of buying control of a number of banks, particularly in the Ohio Valley, and to do a general investment business, such as underwriting issues of stocks and bonds of various corporations. That part of it, particularly, was

William S. Speed—Direct

considered to be quite a profitable thing. There was never any intention, so far as expressed in the board meetings, to abandon the last phases of the reason I gave.

At the time Banco was formed, there was no discussion of any kind in the Board, or anything brought to my notice, to indicate that the Bank was in any financial trouble whatsoever. If there had been, I certainly would not have been in favor of the formation of Banco Company. Our bank had been declaring dividends up to that time. There had not been any criticism from any source regarding those dividends, to my knowledge.

I had stock in the National Bank of Kentucky. After the formation of Banco I traded the Trustees' Certificates for Banco. I retained enough stock to qualify me in the National Bank of Kentucky Board of Directors. I got the dividends on that stock.

At the time I traded my Trustees' Certificates to Banco I certainly did not have any idea or suspicion that the Bank was in such a condition that it might fail. I bought a lot more stock about that time. I have got a record of all my stock.

I had 300 shares of the old \$100 par Trustees' Certificates. These Trustees' Certificates were transferred out of Bank of Kentucky stock and then I bought, January 1, 1929, 300 more at a cost of \$106,800. I exchanged those 600 for 6,000 of the new Trustees' Certificates and I bought 500 more of the new Trustees' Certificates September 16, 1929, for \$22,750.00. So on September 19, 1929, I had 6,500 Trustees' Certificates. I exchanged those for Banco Kentucky stock, which gave me 13,000 shares of Banco. On October 1, 1929, I bought 5,000 shares of Banco at a cost of \$125,000.00. On April 4, 1930, I bought 200 shares. No, I beg your pardon, I exchanged my Louisville Trust Company 10 shares, the qualifying stock, and got 200 shares

William S. Speed—Cross

of Banco Kentucky stock on April 4, 1930. On April 17, 1930, I bought 400 shares and April 22nd, 1930, I bought 200 shares, and April 23rd, 1930, I bought 200 shares, making a total of 19,000 shares.

I had a deposit in the National Bank of Kentucky when it closed. My company, the Louisville Cement Company, had a very large deposit. I testified in the directors' case relative to Examiners' reports and letters from the Comptroller and other matters that came up in that case. I testified for a very long while.

Cross-Examination by Mr. Marx

On Cross-Examination by Mr. Marx Mr. Speed testified as follows:

From the list of stock I read from I acquired 86 shares of National Bank of Kentucky stock on January 1, 1920. That came into the Bank of Kentucky from the German Bank. I was a stockholder in the German Bank and when it merged with the Bank of Commerce, first, and then later with the Bank of Kentucky, that stock was exchanged.

That was simply an exchange of stock. I paid no money at that time. I don't remember when I became a stockholder of the German Bank, or whether I ever bought any or not. My father was a director of the German Bank at his death, and I inherited some of the stock and became a director at that time. I haven't any idea now at what I carried the cost of that 86 shares of National Bank of Kentucky, that is too far back. I would have to look it up. I don't remember buying any. I might have bought a small amount, of German Bank stock, but I think it was all inherited from my father who had been a director of that Bank for a period of years. I don't know at what value I took it when I inherited it from my father's estate. I suppose I could look it up.

William S. Speed—Cross

In 1921 I bought fourteen additional shares. That list was copied by my secretary. I don't know at all what that cost me. The German Bank stock was a high priced stock. In July, 1926, I bought 59 additional shares, and on August 27, 1926, I bought 22 shares. Then, it says here 4 shares, and that apparently goes back to July 28, 1925. This is the Bank of Kentucky stock. I think the list is correct as it is, but I could check that. I will try to find out what those 200 shares of Bank stock cost me. Before I made my transfer into Trustees' Certificates I got a 60 per cent stock dividend. That increased my stock holdings from 200 shares to 320 shares of National Bank of Kentucky stock. I paid nothing for the stock dividend.

I realize that bank stocks are subject to what they call double liability. I knew that at the time.

When I exchanged the National Bank stock for Trustees' Participating Certificates, I got par for par, 320 \$100 par certificates of the Trust. No, I retained 10 shares of National Bank of Kentucky stock, as a director of that bank, and I exchanged 10 for Louisville Trust Company stock, qualifying shares, and then exchanged the other 300 for Trustees' Participating Certificates. I did not have any stock in the Louisville Trust Company until I exchanged some of my Bank of Kentucky stock for Louisville Trust Company stock. Other than by this exchange, I never invested a dollar in the Louisville Trust Company, but this, of course, was a valuable stock that I transferred from one to the other.

I don't remember the terms of the Trust now at all.

But I know I had those 10 qualifying shares in each one, and I got the dividends on each of them. When I resigned from the Louisville Trust Company I withdrew my Louisville Trust Company stock and transferred it to the Trustees' Certificates and then to Banco.

William S. Speed—Cross

I did not have physical possession of the ten shares of stock in either the Louisville Trust Company or the National Bank of Kentucky. I had a receipt for each. The physical custody and control of those certificates was in the hands of the six Trustees under the Trust Agreement I presume. But in this receipt I had a right to withdraw it, if I remember correctly. I think the terms of the receipt gave me the right to withdraw it.

I don't recall that I signed another contract under the terms of which I agreed that, in consideration for their qualifying me as a director, in the event I ceased to be a director for any reason whatever, that stock should become the property of the Trustees and they would exchange for that stock Trustees' Certificates. I don't doubt that is a matter of record.

The minutes of the Trustees recite "The Secretary reported that all but five of the Directors had signed Agreements to the effect that upon death, insolvency, attachment; or upon ceasing to be a director in either of the affiliating institutions, they or their heirs, assigns or personal representatives, would forthwith retransfer to the Trustees, certificates for their qualifying shares of stock in each institution upon receiving from the Trustees, participation certificates of interest for an equal number of shares thereof, upon the basis of a par of \$100 each." Exhibit 8 recites that upon the inventory of the safe deposit box of the trustee my stock and my agreement were both in the box. I don't question that.

My recollection is that the dividends I received were the dividends declared by the National Bank of Kentucky, the same amount as declared by the National Bank of Kentucky. I presume that the amount I would get on T. P. C.'s and the amount I got on my bank stock was identical. That is my recollection. It would be the same. As far as the net

William S. Speed—Cross

amount of money that I would receive as dividends from the Bank is concerned, it was exactly the same whether I held all my stock holdings in Trustees' Certificates, or whether I held all my stock holdings in the Bank and Trust Company.

When I made the exchange of my National Bank stock into Trustees' Certificates I knew a certain percentage was National Bank of Kentucky and a certain percentage was Louisville Trust Company.

I don't suppose I thought of the fact that the Louisville Trust Company stock was also subject to what it popularly termed double liability. But I would not have questioned it at all, that it was subject to the liability. If I had been asked at the time if I knew a state bank's stock was subject to the same liability under state law as National Bank was under national laws I would have said yes.

I don't recall that when I made this exchange I waived my dividend from the qualifying shares. You show me Exhibit No. 8 and call my attention to the record in the minutes of the trustees which says: "Written waiver was presented signed by Messrs. Stites, Bloch, Helm, Kohn . . . Speed, Lyons, Crawford . . . in regard to the payment of dividends on the qualifying shares." I don't recall it just now. I received dividends—it may have come from the other source, but I got the money. The money would be the identical amount, I think. I don't recall that I signed the waiver and got dividends not on the qualifying shares but on the Trustees' Certificates. But I don't question but what I did.

I presume I knew when I made the exchange of National Bank of Kentucky stock for Trustees' Certificates, which included the Louisville Trust, that the Trustees' Certificates were subject to the same double liability. As I said, I don't think I gave the matter consideration at the time, but I would expect it to be.

William S. Speed—Cross

As a director of the National Bank of Kentucky I approved the Trust Agreement. I knew the terms of that agreement. I knew that under the Trust Agreement these Trustees' Certificates which I was taking bore a contractual liability on my part, and on the part of all others similarly situated, to pay whatever assessment might be levied by the Comptroller of Currency on the National Bank, or be determined by the Courts of Kentucky on the State bank stock.

I exchanged all of my \$100 par Trustees' Certificates for \$10 par Trustees' Certificates. Then I exchanged all of my \$10 par certificates two for one for Banco Kentucky stock.

The letter of July 19th, 1929 was sent out while I was in Europe. My name is appended, but apparently I never signed it because I was in Europe and the letter was received at my office and put in my file. I don't recall seeing that until I looked in the file after the Bank closed, but I don't suppose that is material one way or the other. I don't recall that I knew about its having been sent out.

You show me Plaintiff's Exhibit 170. That is my signature. I apparently signed it sometime in September; I don't know just when. Payment was to be made the first of October. I think I went to Europe the latter part of June, I am not sure, and got back sometime in September, so apparently this would be after that.

This Exhibit refers to the letter and says "Subscription to the shares of the Banco Kentucky Company under the Reorganization Plan as outlined in the letter of July 19, 1929." That does not refresh my recollection that I did know about that letter. I don't recall the letter at all until after the Bank closed, but I knew in a general way what was being done.

Plaintiff's Exhibit 171 bears my signature. It relates to somebody else's certificate, and I was the Trustee for my

William S. Speed—Cross

daughter. She had some bank stock which I exchanged for Banco. I am Trustee for this account. I presume I signed Exhibit 171 about the same time. I don't know.

Said papers were received in evidence and marked for identification "Plaintiff's Exhibits Nos. 170 and 171."

Plaintiff's exhibit No. 153, bears my signature and I wrote the address. I presume that was written about the same time as the others. I don't know. I think it must have been, though. I don't think I can remember just now whether I was in Paris when I was in Europe. I have been to Europe quite a good deal. When I was in Paris I read either the Paris edition of the New York Herald or the Chicago Tribune. I don't recall having seen Plaintiff's Exhibit No. 99, a clipping from the Paris edition of the New York Herald reciting the purchase by Banco Kentucky of the Cincinnati banks. I might have seen it but I don't recall.

I think Mr. Boswell was a director of the Louisville Trust Company. I think he was connected with that company. I don't know whether he was in Europe at that time. I don't recall seeing him. I did not communicate with him from Paris.

My 320 shares of National Bank of Kentucky stock, by virtue of these several exchanges, first into Trust Certificates and then into Banco stock gave me 6,000 shares of Banco.

I had 300 shares of Trustees' Certificates and I bought 300 additional of the \$10 par. Those 6,000 were converted into 12,000 shares of Banco. No—600 were converted into 12,000 Banco. The 600 were split 10 for 1. Then I purchased 500, making 6,500 \$10 par Trustees' Participation Certificates. When I exchanged it into Banco it made

William S. Speed—Cross

13,000 shares of Banco. Then, these other purchases were made afterwards.

When I made the exchange and received 13,000 shares of BancoKentucky stock in exchange for the bank stock represented by the Trustees' Certificates, I don't believe I reported to the United States Government any taxable gain or loss as a result of that transaction. I don't think there was any taxable gain or loss. My records were examined every year by the Treasury Department examiners here. My records would show all these transactions.

There is no doubt that at the issue price of Banco, \$25 for each share, whereby I got \$50 for a \$10 Trust Certificate, at that figure there was a considerable appreciation above the cost of my bank stock. I bought some Trustees' Participation Certificates on September 16, 1929, which was just before the exchange date. Those were the Interim Trust Certificates. I paid about \$45.50 for each certificate. So when I exchanged those certificates for two shares of Banco at \$25.00 a share, that would make a difference of, roughly speaking, a gain of about \$50.00 on a \$100.00 par. In other words, there would have been a slight profit on purchasing rather than subscribing at par. I did both. January 21st, 1929 I bought 300 of the old certificates and paid \$106,000 for it. That is \$356.00 per certificate. Figuring it out in my head and I don't say it is correct, there would be a gain on the purchase I made January 21, 1929 of a difference, roughly, between \$17 and \$25, if it was sold at \$25.

You have to have consummated your sale after your purchase in order to make the gain. I did not report any taxable gain when I made the exchange into BancoKentucky stock. I followed the ruling of the Government official on all that. My books were open to the Government and they were examined by the Government every year

William S. Speed—Cross

and the Government lawyers accepted the situation as not disclosing any taxable gain, that is my recollection.

I made a further purchase of Banco after my initial subscription that was at a little under \$25. I don't remember what the figures are there. This purchase on April 17, 1930 of 400 shares cost 23 and nearly eight-tenths dollars a share. On April 22, 1930, 200 shares cost \$23.60 something; and April 23rd, a day later, 200 shares cost \$24 and about one tenth.

To my knowledge there was no effort made by the Banco-Kentucky Company to try to uphold or stabilize the market by the purchase of shares of stock on its own account. I believe that did come out later on in the trial of the Bank case, that there was an effort on the part of Banco to maintain its stock, but not to my knowledge, and not to the knowledge of any of the directors, so far as I knew. I didn't know until after the bank closed or just about the time the bank closed that Banco went out into the market when it was falling, and bought 106,000 shares at a cost of over \$2,300,000.

After the National Bank of Kentucky failed I took a loss on my income tax. I sold my stock after the bank went down and got almost nothing for it, and I took a loss on it. That was all known to the tax officials. I did make a sale after the Bank closed, had a loss then and reported the loss. I took the loss on the basis of the cost of my National Bank of Kentucky stock. I took the cost all the way through. Just as you asked me about this first purchase, as to what the whole thing cost, and what I got for it, I took the difference as a loss. That is, the cost of the Bank stock to me.

I attended the National Bank of Kentucky Board meeting June 28, 1929. I went away just about the first of July. The record shows that I again attended a Board meeting

William S. Speed—Cross

September 6, 1929. I was going to say that I attended the meetings quite regularly when I was in town, and I think that in itself shows just about the time I was away; as soon as I got back I probably attended the next meeting. Banco had been discussed before I left, in the spring, I think, of 1929.

155—Now, the main object of the formation of Banco-Kentucky was to acquire a chain of banks?

A.—That was one of the objects.

156—No, I want to refresh your recollection, not on one of the objects, but on it being the main object, and I call your attention to your own testimony given in the case of *Anderson vs. Akers*: This question 43 was asked you: "When did you first learn that it was planned to acquire the banks?" and you answered: "That was discussed some little time before the Banco-Kentucky Company was formed. That was the main object of the formation of the Banco-Kentucky Company—to acquire a chain of banks."

A.—I think that is correct. The other question came up there at exactly the same time, or probably shortly after about the investment matters.

157—Then, it is correct to say that that was the main object of Banco-Kentucky, to form a chain of banks?

A.—That testimony is as near correct as I could make it.

When we organized Banco-Kentucky Company we expected to get a substantial majority of the stock of both the Louisville Trust Company and National Bank of Kentucky into it. The whole plan hinged on getting absolute control of those two banks.

The holders of the Trustees' Certificates were quite enthusiastic about the plan, and they practically all exchanged their stock for Banco stock. I don't recall that we also got more cash from the sale of stock than we expected to get. My recollection now—it is a long while—is that they got about \$9,000,000 in cash.

William S. Speed—Cross

Question 360 asked me in the case of *Anderson v. Akers* was "What effect did that have on the amount of money Banco expected to realize?" and my answer was: "They got more cash than they expected to get." I assume that is correct; I testified to my best knowledge at that time.

At the time they organized the Banco Kentucky Company we expected the National Bank of Kentucky would be denationalized and changed into a state bank, about that time. That was in order to get out of the Federal Reserve. And we were going to use the Banco Kentucky Company as a sort of Federal Reserve.

I didn't make the statement that I believed in making loans to encourage the employees of the Bank to purchase stock in the Banco Kentucky Company, on the theory that it was a sort of profit sharing program. I don't know who made that. If Mr. Dodd made that statement and I said I believed in it—I think it is a good thing, as a rule, in any company, to do what you can to help the employees. That would apply to the employees of the Bank and to others—to the Trust Company I presume.

You asked me if it was not really all one company. Well, I think there were two; both the Bank and Trust Company were entirely separate corporations. I wouldn't say that as far as the ownership was concerned, however, it was altogether. You couldn't own Trustees' Certificates without having an interest in the other. If you had Trustees' Certificates you had both.

I was one of the Directors of the National Bank of Kentucky who voted to request the officers of the Banco Kentucky Company to purchase the debentures of the Murray Rubber Company and the participation in the Lewis Humphrey note for \$600,000 and take it out of the Bank. I made the motion to request that Banco do this, but I did not participate in anything that the Banco did because I

William S. Speed—Cross

really was out of town after that for a short time. But I made the motion in the Bank to request the Banco officers to take \$600,000 of Banco's money and put that in the Bank, and take the Murray Rubber Company debentures and the Lewis Humphrey note over into Banco.

179—Of course, when you did that you had already been advised by the National Bank Examiner that those debentures and the Lewis Humphrey note were not worth any \$600,000?

A.—Of course, I testified I did not consider that they were worthless, that I thought there was a work-out there. Of course, I would not have wanted the Bank to have authorized a \$600,000 loan on those as security.

180—I am not going into the question as to whether they were worthless or not: They were not worth any \$600,000?

A.—Unless the Murray Rubber Company worked out.

181—At the very time you made the motion, Mr. Neill, the Chief National Bank Examiner, had been before your Board and told you he would not permit the National Bank of Kentucky to carry those two items any longer.

A.—That is true, yes.

I might explain it this way: Mr. Neill said if these two items were not taken out of the Bank he would make them charge off, and to have the surplus cut down would have been a bad thing for the Bank, and as Banco owned a great majority of the stock of the Bank, it was to the advantage of Banco to do it. I felt the same way. I would not have made the motion if I had not thought so.

In other words, my intent in making that motion was that, since Banco owned ninety-five per cent or more of the stock of the Bank, that if that was a bad asset they owned ninety-five per cent of what was bad, and if it was good, they owned ninety-five per cent of what was good.

186—So that the transfer of \$600,000 to the National Bank of Kentucky for the Murray Rubber Company debentures

William S. Speed—Redirect

tures was a transfer that did not affect the ownership, insofar as that item was concerned, to any large extent?

A.—Of course, the Banco owned various other things, and it is pretty hard to explain—

The Court: Objection sustained to that question. You may draw any inference, but this witness cannot contemplate all of those facts and answer that in any way that will throw any light on the issue here. It would require an extended answer to answer that question.

Mr. Marx: I will just make an avowal that if permitted I would like to ask the witness here where he did not say, and offer to prove that he did say, in discussing this subject in the case of Carroll vs. Chemical Bank, No. 205,223 Jefferson Circuit Court, Chancery Branch, First Division:

“Q. 93—And their ownership of this stock in the National Bank of Kentucky made them respectively the owners of the Murray Rubber Company item? A—To a very large extent, yes. Q. 94—And the transfer of \$600,000 to the National Bank of Kentucky for the Murray Rubber Company note and debentures was merely a transfer which did not affect the ownership, insofar as that item was concerned? A—To a very large extent it did not affect the ownership, no.”

Redirect Examination by Mr. Crawford

On Redirect Examination by Mr. Crawford, Mr. Speed testified as follows:

I did not transfer any of my Banco stock prior to the closing of the National Bank of Kentucky.

I was in Kentucky when the Brighton Bank was bought, I had come back. I was present at the meeting of the Banco Board September 26, 1929. At that meeting—that is September 27th—I approved the Brighton Bank's purchase. I was in this country when the article appearing in Paris about the purchase of the Brighton Bank & Trust Company appeared.

William S. Speed—Redirect

In the directors' case I was asked "Tell us generally what was the intention of the stockholders and directors of your Bank and of the Louisville Trust Company directors in forming Banco." I answered, "The object was to form a large corporation for the purpose of getting control not only of the Bank of Kentucky and of the Louisville Trust Company, but a chain of banks in the Ohio Valley. It was further contemplated to use the Banco Company as a substitute for the Federal Reserve and they expected to handle bond issues and do various other things that other organizations of that type had done in other parts of the country." I assume that is what I said. That is the fact.

In that case I was asked "Did the organizers of Banco Kentucky Company expect to get all of the stock of either the Louisville Trust Company or the Bank of Kentucky." I answered "No, I remember the time that they expected to get a majority and the whole plan hinged on getting control." I was asked "What was the fact about that?" I answered "What really happened was that the holders of these Trustees' Certificates were quite enthusiastic about the plan, and they, practically all of them, exchanged their stock for Banco Kentucky stock." We got more than was generally expected. That reduced the amount we had left for sale. There would be less for sale for cash.

In that case I was asked "What effect did that have on the amount of money Banco expected to realize?" and I answered "They got more cash than they expected to get." The meaning of that was as I considered it, it caused more of the stock to be subscribed for, and the cash came in, perhaps faster than they expected. I think they fully expected to sell the rest of the stock before they got through.

200—Did they sell the rest of the stock?

A.—They sold all of it and increased the amount of stock later on.

C. C. Hieatt—Direct

201—Did they sell all of it?

Mr. Marx: That is objected to.

A.—My recollection is that they did.

Mr. Marx: I object.

The Court: Do you know, Mr. Speed, whether they sold all the stock or not?

A.—No, I don't.

The Court: All right, that is the answer; he says he doesn't know.

C. C. Hieatt,

called for Defendants, examined by Mr. Crawford, testified as follows:

My name is C. C. Hieatt. My business is real estate.

I live in Harrod's Creek, in Jefferson County, in which I have lived all my life. I have been in the real estate business almost forty years. My office is in Louisville. I had offices in another city at one time. I was President of the Consolidated Realty Company from the date of its organization in 1912, until it failed in 1932. I am a member of the Advisory Committee of the National Association of Real Estate Boards, and at one time I was President of that organization.

I was a director of the Louisville Trust Company prior to 1927. I was the largest stockholder in the Louisville Trust Company. I was in the Trust Company at the time of the trusteeing of certificates of its stock with the National Bank of Kentucky stock. At that time my only connection with the National Bank of Kentucky was as a customer and borrower. I mean, I had an account there and transacted business with the Bank, just banking business, but not as a stockholder or director.

I was a member of a committee of three who negotiated the unification of the Bank of Kentucky and Louisville

C. C. Heatt—Direct

Trust Company, and advocated the union. I transferred my stock for Trustees' Participation Certificates. After that I continued as a director in both institutions, remaining a director of the National Bank of Kentucky until January 13th or 14th, 1930.

I knew that in order to effectuate the agreement that we had reached, to make an even swap—I mean a one to four unification—that it was necessary for the Bank to declare a stock dividend of 60 per cent so that they would have four shares of stock to one of the Louisville Trust Company.

We had Humphrey Robinson & Company, a firm of accountants who were the Clearing House examiners, and who also examined both the Louisville Trust Company regularly and the Bank of Kentucky—we had them to make a valuation of both institutions. We traded on substantially the valuation they put upon the two institutions, beside other investigations we made, which all confirmed that as the proper valuation.

I was a member of the Board of the National Bank of Kentucky when Banco was discussed. I would say that I heard most of the discussion. I wouldn't say I attended every meeting, but I attended substantially every meeting, I think, at that time.

Plaintiff's objection to question regarding the purpose and reason for organizing Banco overruled.

A.—I would say Banco was the evolution of certain ideas Mr. Brown had and some of the rest of them had that started shortly after the unification of the Trust Company and the Bank, and it finally took form in Banco Kentucky, as it was organized. The beginning of these transactions contemplated the acquisition of banks in Cincinnati and Indianapolis particularly, having a triangle here in the central west, and then it widened out and finally, of course,

C. C. Heatt—Direct

before we got through discussing it, we discussed the possibilities of a new company which would have—in other words, we concluded that the logical thing to carry out the purposes that we had finally concluded ought to be carried out, was the organization of a new company which would start out with the acquisition of a controlling interest in the Bank and Trust Company, and then proceed, as the next step, to acquire other banks in the Ohio Valley and not only in Indianapolis, even in Chicago, was discussed quite a good deal—the Harris Bank & Trust Company, or the Harris Investment Concern. We also discussed power of this company to engage in underwritings and the purchase and sale of securities, the reorganization of corporations, and various things that were thought to be very profitable at that time—the purchase of bond issues and stock in corporations. I left the Banco Board in March, 1930. Up to that time Banco had not been able to set up any organization for underwriting. They had purchased quite a number of banks at that time.

I would say that in the discussions we contemplated at least fifty-one per cent of Trustees' Participation Certificates would be transferred to Banco. I don't think there was any question in any one's mind that we would get fifty-one per cent, but I think opinions as to how much more would probably vary, but the result of the subscription, I think, exceeded anybody's expectations, because it was almost unanimous.

As I recall it, after setting aside sufficient shares to accommodate the holders, then it was concluded that as long as that many had come in, we might as well abandon the idea of only having majority control and open it up to the other trustees, and an amount was set aside, I think, sufficient to accommodate all the Trustees' Participation Certificate holders. That, with the stock that had actually

C. C. Hieatt—Direct

been sold, and the 250,000 shares, as I remember it, that we thought was under contract to Blythe & Company of Chicago, would take up the whole \$20,000,000 of the par value. That is my recollection.

That did not give Banco as much money as the organizers hoped it would have. At that time I would say, from the discussions in the Board and particularly from Mr. Brown's talks, that it was contemplated that about \$10,000,000—there would be about \$15,000,000 surplus cash after taking care of the Trustees' Certificates. The result was, I think, about \$9,000,000 cash—no, there was more cash than that; it would have been considerably more cash than \$15,000,000—maybe \$15,000,000 that would be put into Trustees' Certificates and the balance of it would be cash, \$35,000,000. They talked in pretty big figures in those happy days of '29.

I transferred my Trust Company stock into Trustees' Participation Certificates. As I recall it, I sold all of my Trustees' Participation Certificates in the early part of '29 before Banco was organized, retaining, I think, only qualifying shares in the Bank and Trust Company, and maybe some odds and ends of other stock, but I and my brother and Mr. Scheirich, my associate in business, between us owned 2,595 shares of Trustees' Participation Certificates, which was the second largest ownership in Trustees' Participation Certificates, Mr. Brown having about 2,750, and I controlled 2,495. I remained on the Board after I sold that, from January to March. The condition of the bank had absolutely nothing to do with the sale.

33—Why did you make the sale?

A.—Mr. Crawford, I would say that I was actuated by two or three things, the principal one of which was that I had found that after the combination of the Louisville

C. C. Heatt—Direct

Trust Company and the Bank of Kentucky, the unification in 1927—up until that time our business required a great deal of money. We were building in those days one million to two and a half million dollars worth of buildings a year, and the financing of them required a great deal of money and credit, and up until the time of the unification I was able to sell our paper in nearly all the banks here. With the exception of maybe one we did business with practically all of them. After that time, after I got into the Bank of Kentucky, some of those things were curtailed, the opportunities for borrowing. Of course, after the unification and I became a director of the Bank of Kentucky, I felt a little different about using the Bank of Kentucky, but we needed, as I say, considerable sums of money, and I had concluded about the time—about January, 1929, that it would be a good thing to sell the stock of the Bank of Kentucky and put it in our business—that it would be better than to keep it in that bank stock. We really needed it in our business. That was one of the things that actuated me. The others were probably more personal.

I hadn't the slightest idea at the time I sold my stock in the bank that there was any trouble of any kind in either institution. In fact, when Banco was organized and the thing really engaged my imagination, the prospect and possibilities of Banco, I really was pretty regretful that I had to sit around there with all my stock gone and not really have a considerable part in it.

At the instance of the Bank in 1928 I made a valuation of the Kentucky Wagon Company property. I think it was around May, 1928. As I recall, Mr. R. M. Martin and Mr. Harry W. Goodman participated in that valuation with me. Mr. Martin is one of the older real estate men in Louisville. For a good many years he was Chairman of the City Board of Equalization. He was a well known real estate

C. C. Hieatt—Cross

appraiser and one of the best in Louisville. Mr. Goodman was with the firm of Goodman & Hambleton. He has been in the real estate business about as long as I and is one of the top men in the real estate business in Louisville.

That appraisement of the Wagon Company was something over 2,000,000. I think I sent you over a few weeks or so ago a copy of it I had left. I am reading into the record the amount of our appraisal: "Our appraisal on the land, buildings and the elevators, heating system, and sprinkler and ventilating and lighting and plumbing in the buildings, excluding the machinery, in the main place was \$2,020,982." There were two other tracts of property. They had one in Highland Park and one on the west side of Third Street, which brought the total real estate appraisal up to \$2,077,732. We didn't attempt to appraise any inventory. We saw considerable inventory when we were out there, but we were employed to make a real estate appraisal, and that is all we made.

We did not include any machinery in our appraisal, we merely included the fixed things, that we considered to go with the real estate, like the sprinkler system and plumbing and heating, and things of that kind. We did not include any machinery. The Wagon Company had a great deal of machinery, some of which was being used, and a considerable amount that was not being used at that time. It was operating, I would say, about twenty-five or thirty per cent of its full capacity at the time we made that appraisal.

Cross-Examination by Mr. Marx

On Cross-Examination by Mr. Marx, Mr. Hieatt testified as follows:

I was the principal stockholder in the Consolidated Realty Company that had a line of credit with the Bank of Kentucky and had done business with the Bank of Kentucky

C. C. Hieatt—Cross

for, I would say, since about 1910. The Consolidated had several subsidiaries, the General Construction Company, the City Plumbing & Heating Company, the City Mill & Lumber Company, but I don't think any of these had—the Louisville Real Estate Corporation at one time had a good deal of money borrowed from the Bank of Kentucky.

I personally was a borrower at various times, had been a considerable borrower from the Bank of Kentucky. If any of my employees were borrowers I wouldn't know it—I don't know it. I said Mr. Scheirick was at one time a borrower. I knew it. He was Vice-President and I think I knew what he was doing. Mr. G. Y. Hieatt is my brother. I knew that he was a borrower.

54—The Consolidated Realty Company loan, the C. C. Hieatt loan, the H. J. Scheirick loan, the G. Y. Hieatt loan and the loans of these subsidiaries were all for the accommodation of either yourself or the Consolidated Realty Company, weren't they?

A.—I would say that the Louisville Realty Corporation loans were not, except for the fact that the Consolidated Realty Company owned quite a majority of stock in it. It had some outside stockholders, but ran its business on its own power. Of course, my loans were individual loans, the ones I signed C. C. Hieatt. The G. Y. Hieatt and Scheirick loans were for themselves, except for one loan of \$100,000 of Mr. Scheirick's, which really was not a loan to him at all, but was made to carry out what they had at that time, a way to get a bigger rate of interest. They would make you carry 20 per cent, or a considerable portion of your loan, in a certificate of deposit. Instead, of having the Consolidated Realty Company carrying that \$100,000, Mr. Scheirick made the note for \$100,000 and had a certificate of deposit for \$100,000, so the certificate would pay the note. That is the only one I know about,—that is the only

thing I know of that Mr. Scheirick did for the benefit of the Consolidated Realty Company. As I understand your question, all those loans were for the benefit of the Consolidated Realty Company? To that extent his loan was for the benefit of the Consolidated Realty Company. Not all those other loans were for the benefit of the Consolidated Realty Company. My individual loans—I don't think, were. Some of them may have been; I may have borrowed money and loaned it to the Consolidated Realty Company. I don't recall it.

The Consolidated Realty Company was forced into bankruptcy about fifteen months after the Bank closed, into involuntary, and in June, 1932, six months after the Consolidated Realty Company went into bankruptcy, on account of endorsement that Mr. Scheirich, my brother, and I had made for the Consolidated, we went into bankruptcy. By "We" I mean Mr. Scheirich, my brother and myself. I think all have been discharged. I know I have and I think everybody has, except the Consolidated Realty Company is still—that bankruptcy has never been closed.

I don't think that National Bank of Kentucky lost more than a quarter of a million dollars as a result of that. I think it will make money on the Consolidated Realty Company loan. Personally, I think I owed the Bank \$6,000 when it closed—I had owed it nearly \$500,000. I did owe it \$6,000 personally, which it will lose. My opinion is that the National Bank of Kentucky has not lost a cent to date on those loans.

I don't know how much the bank has been paid to date on them. Since our bankruptcy—we paid a considerable amount, I think, between the receivership and our bankruptcy. I could get you that amount, but since the bankruptcy of the Consolidated and the taking over of all the collaterals by the receiver, by purchases in the bankruptcy.

C. C. Hieatt—Cross

court—I don't know how much it was, but I do know he has collected a considerable amount; I know that they have made money.

At the time the bank closed The Consolidated Realty Company owed it \$273,000.00, I think. They owed quite a lot in 1929, I imagine. I would say substantially \$400,000. \$405,000 sounds about right. I assume that C. C. Hieatt and H. J. Scheirich owed \$9,595.00. I would assume that I owed \$23,530.00. I think The General Realty Corporation owed \$130,650.00. I wouldn't know what H. J. Scheirich owed individually.

I didn't mention the Gardens Community Corporation—I didn't control that. I only had a one-fourth interest and the Consolidated Realty Company had no interest. I don't know what it owed the Bank. I said I know they owed some money. I didn't know it was quite a large amount at that time. I think that Gardens Communities Corporation loan was placed there by Mr. William S. Speed, who was President at that time—if there was any loan there at that time it was probably placed by him. I had one-fourth of the stock.

The figures you have given there would indicate that our companies owed, at the time Banco was organized, about \$600,000. Approximately that, or a little less than that, maybe. I know at the time of the unification—I think the Consolidated Realty Company and myself and probably G. Y. Hieatt, my brother, owed about a million dollars, so the Bank Examiner called me over and explained to me.

It has now been more than eight years since the Bank closed, eight years last November. I would be amazed at any such situation as there still being due and owing on these loans \$499,000.00. I couldn't say a word about what balance may be due.

C. C. Heatt—Cross

I would say that could not—from what I know about the realization on the assets, I say that could not possibly be true. I don't know anything about the Receiver's accounting or his accounts, of course, and I don't know what his books show, but I would say, from my knowledge of his realizations that I know about that have been made on Consolidated collateral, that it could not possibly be a balance of \$499,000. I would not undertake to give you in detail what these realizations are. But I know there were many lien notes, many, many lien notes.

I testified before the Jefferson County Grand Jury which met between February 23rd and February 27th, 1931. Sometime about that time. They were considering this \$2,000,000 to Wakefield I think. I was a director of Banco-Kentucky Company from the time it started until I resigned in March 1930. I never heard of the Wakefield loan until after the Bank closed.

I would assume I was asked the following question and that I made the following answer: "Can you tell the Jury in as few words as possible just why Banco-Kentucky Company was formed?"

"A.—Mr. Allen, of course, from the time I first got into the Bank of Kentucky or associated with Mr. Brown was at the time of the merger of the Louisville Trust Company with the National Bank of Kentucky when the participation certificates were issued representing one-fifth of a share of Trust Company and four-fifths of a share of Banco-Kentucky. I then became a director of the National Bank of Kentucky. Mr. Brown began shortly after that time talking about the desirability of forming an organization that would control a big bank in Cincinnati and one in Indianapolis, and the banks here. It was in his mind to have these affiliations with the Indiana National and the Middle West. That picture was talked about by him many times, and of

C. C. Heatt—Cross

course, following taking into the group the Louisville National in 1929, that was merged with the Louisville Trust Company and Mr. Bean became president of the Louisville Trust Company. Following that, we were discussing the handling of these mergers, whether the banks should be put in one building, like the Citizens Union and Fidelity & Columbia Trust Company. Whether they should be merged into one trust company or whether the National Bank should give up its charter, and not much headway was made until the summer of 1929 and in the meantime the question of a holding company to hold the stock of all the banks was brought up which finally culminated in the BancoKentucky Company. That is as near as I can give you the reason for the organization. After that was started, Mr. Brown still talked about making it big enough to embrace the three states in one group. But as far as I could say, that was the purpose of the organization of BancoKentucky. It was for control of the banking situation in the Middle West. Of course, he told us many things about the TransAmerica, the Gianinni Chain and other chain banking. That was the picture that was presented to us. He said it was the modern thing that the banks were doing, and it would put us in a position to make Louisville and Kentucky, the center. It was a right attractive picture."

That was a true statement of the facts. Generally, that was the situation. I don't recall that Mr. Brown referred to it definitely as a holding company.

I testified in the case of Anderson vs. Akers in the afternoon session of May 10, 1932. Mr. Allen Dodd examined me and asked me to give the history of the organization of the BancoKentucky Company. My answer was, "Of course, the question of the future course of our merged banks was one that was always in mind. I never thought that we had worked out the whole matter. I felt I would never be satisfied unless

C. C. Heatt—Cross

the Bank of Kentucky and the Trust Company were housed together. I didn't think that thorough effectiveness would come about until we got these two banks in the one house, and there were frequent discussions of that in the Board and the course that we should take, and Mr. Brown from time to time would discuss one thing and another. I remember that considerably back there he developed the question and told us that he had been thinking about trying to tie in the First National Bank in Cincinnati and the Indiana National Bank in Indianapolis, and he gave a picture of the triangle, Indianapolis, Cincinnati, and Louisville, and that would cover the whole field, and then later in the Spring of 1929 we had frequent discussions. That was all a matter of evolution. He made the suggestion that he had come to the conclusion that the way to do the thing was to form a holding company that could not only acquire the stock of the Trust Company and of the Bank of Kentucky but could acquire the stock of other banks in the Ohio Valley and he developed that and said that that would care for the connections in Eastern Kentucky through Cincinnati particularly. He dwelt on the fact that the Bank of Kentucky had never been able to get its share of the business in Eastern Kentucky and while the bank had gotten down in Tennessee, it had a hard time getting into Eastern Kentucky, but that if we got Cincinnati tied into us, the Bank of Kentucky could get the business in Eastern Kentucky. There was a lot of discussion about it and it sold itself to the Board. He also developed the question about the holding company acting as a sort of Federal Reserve."

That sounds like the answer I would make.

The language may have been mine, and that was what I had in mind that it would be, as far as the banks were concerned, a company to hold the stock of these banks. I don't think it was ever contemplated that Banco was to deal in bank stock, that is, to buy and sell them, but the

C. C. Heatt—Cross

banks that were to be acquired would be bought with the idea that they were to be kept together in one group, as a rather permanent organization.

I knew that Banco Kentucky stock was being sold by the officers of the National Bank of Kentucky and the Louisville Trust Company when it was offered for sale. I think I knew that both of those banks were receiving subscriptions.

I knew that we discussed interesting as many employees of the two banks, or the Bank and Trust Company, in the stock of Banco as possible, so as to have them interested in the success of the banks, and I think that the officers of the banks bought stock, and of course, I imagine many of the customers. I had nothing whatever to do with the subscription to that stock, or the sale of it, personally.

Prior to the separation of the Board in January, 1930, the members of the old Louisville Trust Company Board became members of the National Bank of Kentucky Board and vice versa. The Directors who came onto the Louisville Trust Company Board through the merger of the Louisville National did not become Directors of the Bank of Kentucky.

When the separation in the Board occurred, with reference to the suggestion that officers ought to be left off the Banco Board, my recollection of the matter was that Mr. Brown recommended that the officers both of the Louisville Trust Company and the Bank of Kentucky be left off of the Board of the Banco Kentucky, and said that if the officers remained on the Board, that there would be men in each of these other banks, officers or directors, that would feel like they ought to come on the Board, that he had in mind certain important people that he named—Mr. Whitsel, I believe, of Cincinnati, the Manager of some newspaper, The Enquirer, or some paper. Mr. Wiley, the Manager of the Enquirer was the man. He wanted Mr. Wiley on the Board

C. C. Heatt—Cross

and Mr. Shumaker of Cincinnati, and Mr. O'Brien of the Standard Gas & Electric Company—he had certain people he wanted on the Board that might be influential in obtaining the kind of business he wanted. He didn't want the Banco Board to be loaded up with too many officers of the banks it controlled. That, in substance, was the statement he made, and it sort of appealed to the Directors and they agreed to it.

I recall that at the Grand Jury hearing I was asked about the acquisition of assets by Banco from the National Bank of Kentucky. I said, "After all, the whole thing was one and it all belonged to the same people; that it was just taking money out of one pocket and putting it in another, if the Bank owned it and it was questionable, it didn't really make any difference. I never heard any suggestion made that it was one of the purposes of Banco Kentucky."

That sounds like what I would have said. I never heard of the Murray Rubber transaction until after the banks closed. I was not a director of the Bank of Kentucky at the time that transaction took place. I probably was just volunteering my own idea of probably how they felt about it when they made such a transfer. I had nothing to do with such a transfer and heard no discussion about it, and I probably intended to say that they felt like it was taking money out of one pocket and putting it in another, but I certainly heard no discussion about it or the fact that it was made, or any talk about it at all, and certainly nothing was ever said in the organization of Banco about doing any such thing. I was probably reconstructing, probably, what the Board felt about it, because I had no personal knowledge. Mr. Allen, who was foreman of that Grand Jury, was a very close personal friend of mine, and I thought he was just asking me some questions to get my viewpoint or some-

C. C. Hieatt—Cross

thing, and that was my idea about it, that if they did such a thing, they probably felt that way about it, and justified it in that way.

The following is the question which was there asked me and the answer is—I probably said something of the kind.

“Q.—Do you believe if BancoKentucky had bought some assets of the National Bank of Kentucky which were not good, that that would affect BancoKentucky's holdings according to the assets and liabilities of that particular statement National Bank of Kentucky assets total less than half of the assets of the corporation—now if the National Bank of Kentucky sold its slow notes to the BancoKentucky, would that be detrimental to the interests of the other banks in the BancoKentucky Company chain?” A.—“At least a substantial part of the stock belonged to BancoKentucky. I think the question is would the sale of those assets that might be questionable—would that hurt the whole situation, that is a right difficult situation. If there was something in the Bank of Kentucky that might be criticized by the Bank Examiner, it might be a good thing to take it out of the Bank of Kentucky and I can see where it might have been thought it was a constructive thing to put it in the BancoKentucky Company, rather than to have something happen to the bank. Of course, it is a little difficult to analyze whether to leave it in the Bank of Kentucky and it be bad or put it into BancoKentucky and it be bad. It was expressed by Mr. Brown in various ways that it was all one thing and all belonged to the same people and was really taking the money out of one pocket and putting it in another. I didn't know it had been done until after the bank closed.”

The only thing that puzzles me about the answer—I probably said something of the kind, as I said was merely theorizing after the event. I wouldn't have thought that I could have said Mr. Brown expressed it, because I never

C. C. Heatt—Cross

discussed it with Mr. Brown, nor the transfer of these assets from the Bank to the Banco Kentucky Company.

I would say, if I made any statement to the Grand Jury, that Mr. Brown said that things that helped the Bank helped Banco, and things that hurt the Bank, hurt Banco, because it was all one thing and belonged to the same people, which I probably did if the stenographer put it down, if I made a statement of that kind, I would have said that Mr. Brown felt, or Mr. Brown probably felt that it was all one thing, and I believe Mr. Brown did, if you want to know what I think about it; I believe he felt that after all everybody's interest was the same interest, the stockholders of the Bank and the stockholders of Banco Kentucky, and the Trust Company, and the success of one meant the success of the other.

I didn't express the same idea in the previous question. I didn't say that. I said they must have felt they were taking it out of one pocket and putting it into another. I never thought about it at all; I didn't know anything about the transaction. They asked me what I thought about it and I was probably reconstructing what the Directors thought about it without any knowledge of what they did say or do.

Before the Grand Jury I was asked the reason for my selling my stock in the Bank, and if that was the cause of any irregularity I noticed in the operation of either the Bank or Banco Kentucky. I answered, "Of course, I was a big stockholder in the Louisville Trust Company, and when the Louisville Trust Company and the National Bank of Kentucky was put together, I was the second largest stockholder in the two groups. Mr. Brown had a little more stock than I did. The thing didn't work out like I thought. It was my thought when we made the deal with the Louisville Trust Company about getting the institutions to-

C. C. Heatt—Cross

gether in one building, and having the trust business of the National Bank of Kentucky put in the Louisville Trust Company, etc., but that thing didn't come about like I hoped and it was put off and put off and we had not got to the finale of the picture yet, so when the Louisville National Bank was taken in, I saw what I thought a good opportunity to market my stock and I started in to sell it then. I sold it in the Spring of 1929 and there was quite a big demand. I also had other reasons for selling—I needed money and we had a lot of things we wanted to take care of in that and I sold the stock to put the money in my business. I never bought any Banco Kentucky stock and only had just about enough stock to qualify me as a director. I then parted with my financial interest in it and didn't have enough interest to justify me in staying in."

As far as I stated the facts there that was a correct statement of facts. I think it might be explained or modified. I did not go fully into the question about the fact that the plan had not worked out as I had hoped it to do, about housing the two institutions in one building. I was very strong for that, and when Mr. Brown—when the negotiations were concluded with the Louisville National Banking Company, which had just built a new building, Mr. Brown said that would solve the building question, so the Trust Company could move into that building and the Bank into the old Louisville Trust Building. It meant that those two banks would remain separate. The picture I had had in mind of having them housed in one house, so there would be close contact between the officers of the Bank and of the Trust Company and everybody could work together, was gone. I was very much disappointed in that and some other things that happened just before that; and just made me feel like, needing the money in my business, there was no use trying to hold on to that stock, and I sold it. That is

C. C. Heatt—Cross

what I meant when I said it had not worked out like I hoped when the thing took shape. It apparently meant there was no opportunity to have the two housed in one building like the Citizens Union and Fidelity & Columbia Trust Company here.

When I sold my stock the Louisville Trust Company was housed in its old building at the corner. It moved into 421 West Market Street on May 24, 1929. I had sold my stock before that time. The merger was not consummated—the merger was agreed on, I think, in January, but it was not consummated, the legal formality merging the two corporations, until several months later—I don't know what date, but I think about the first of June, and the Trust Company moved over into 421, and I thought at that time that the Bank of Kentucky, in renting its quarters, would move into the old Louisville Trust Building, which was against my judgment as to what was the best situation for the two banks. In the meantime, I had, I am sure, sold all my stock except a small amount, before the Trust Company moved out. I think I sold all my stock within about sixty days after January 14th.

I knew it was contemplated that the Trust Company, when merged, would stay in one of the buildings. I thought at that time they would stay in the building at Fifth and Market and the Bank of Kentucky would move into the new building which the Louisville National had built. As it turned out, the Trust Company moved into the new building and left the old building for the Bank of Kentucky. They left it vacant, but as I thought, with the idea of the Bank of Kentucky moving in it. We did make—I did make, personally, some investigation for Mr. Brown about acquiring property west of the Louisville Trust Company, so it could be enlarged to take care of the Bank of Kentucky.

C. C. Hieatt—Cross

I owned 2,495 shares of the Louisville Trust Company stock, and none of the National Bank of Kentucky. Now, I don't know, I may have bought a few shares of National Bank of Kentucky about that time, but I am not positive about that.

As the owner of Bank stock, I knew that it was subject to an assessment equal to the par value. That was likewise true of the Trust Company stock under the state law.

At one time I had a loan with the National Bank of Kentucky that ran into quite a little money, secured by the Louisville Trust Company stock. I knew when the two banks unified, the Louisville Trust Company and the National Bank of Kentucky, that my unified shares would not be eligible for collateral at either the National Bank of Kentucky or the Louisville Trust Company. I don't remember exactly, but I think I owed the Bank of Kentucky individually about \$450,000.00, or somewhere around that, at that time, and then, a few weeks after the consolidation or the unification became effective, I paid off about, I think around \$400,000 of that loan, which left me owing about \$50,000 individually. I paid that by transferring the securities to the Consolidated Realty Company, the bank stock.

I borrowed money on the Trustee's certificates. I made two loans, I think, at Chicago, and one in New York. I think I borrowed some money from the National Bank of Republic, and also from the Continental Illinois, and I think maybe later on I borrowed some money, half a million dollars, I think, from the Irving Trust Company in New York.

When Banco Kentucky was launched, I did not attempt to ascertain from the other Louisville Bank, whether they would make any loans on the security of Banco stock. I didn't know they would not. As a matter of fact, my own impression is that the Citizens Union did make some loans, but not to me. I have only heard that. I have no personal

C. C. Heatt—Cross

knowledge of it. I didn't attempt to borrow any money, because I had pretty definitely concluded at that time—because I had sold all my bank stocks. I would say the bulk of it was sold between January 15 and March 15, 1930. I know I started selling at \$400.00 a share, and the last stock I sold I got \$495.00 a share. I sold on a rising market.

I assume those sales were before the consolidation of the Louisville National with the Louisville Trust Company. While I remember very definitely that the agreement to consolidate was made, I think, in January, I think it was either April or May before all the necessary changes—. I think the Louisville National was a National Bank, and I think it had to denationalize and become a state bank, and then the two corporations had to be merged under Kentucky law. I think it was probably April before it was consummated, or about then. I know it took several months to consummate it. I would say that by the time that had been concluded, I had sold practically all my stock, except just a few shares.

I commenced to sell after I knew that that merger was going to take place. That was the thing that caused me to make up my mind that I was going to get out and put my money in the real estate business, which didn't do me any good after all.

I don't claim to be a lawyer, although I did practice for about ten years fairly actively, but at the same time I was interested with my brother in the real estate business, and that got so attractive that I began giving up all my time to it. I figured I could make more money in real estate than I could in practicing law, and I began giving all my time to real estate developments and things of that kind.

I think I must have bought the Banco stock which I own. I don't recollect whether I bought that in the open market or whether I sold out a Trustees' Certificate that I got and

transferred it. The record would show. My impression at this time is that I bought that Banco. I had, of course, kept my qualifying shares, I mean, they were never sold in the Bank and Trust Company.

I was on the Board, on all three Boards, in the Fall of 1929, I think it was, when resolutions were introduced, I think, probably in the Trust Company and then in the Bank meeting and then in the Banco meeting, with regard to the borrowing of money. As I recall it, there were printed forms of resolutions which the Directors were asked to vote, giving authority to the officers to negotiate some loans with some New York banks, their correspondent banks in New York. That was the Chemical National and the Chase National Banks. There were two sets of resolutions introduced in each Board meeting. There was quite a good deal of stir about it, people asking what all this meant. I know the directors on the Louisville Trust Board, those who had been old Louisville Trust Company directors, some of them, were sitting there with me and there was a good deal of question about it. It was stated that the banks in New York had requested that these formal resolutions be passed by the Board so that they would be in a position to make loans if the banks required them. That, as I remember it, was very shortly after the depression in the Stock Market in October and November; I think it was about that time. It was not stated at that time, as I recall it, that the banks were going to make any loans, or there was anything definite about it.

145—Didn't they say we may reach a point that we may have to borrow money?

A.—As I say, they didn't say that they needed the money, as I recall it, but that there might be, if the depression went on so that they had to borrow money, this technical thing would be taken care of, so they could get it quickly.

C. C. Hieatt—Cross

That was the way I got it. That was just the background, so if it became necessary to borrow in New York, they would not have to go through the form of having the resolutions passed.

146—They spoke about the fact that it was putting the banks in shape to borrow money, and actually, authority was given to Mr. Brown and Mr. Jones?

A.—I don't remember whether the resolution gave authority to any specific officer or just the officers in general.

We didn't have a meeting of all three Boards at the same time, and all three Boards did not adopt the same resolution at the same time. The order was this: "I think the Louisville Trust Company Board met at two o'clock, say, and held their meeting and passed on their affairs. Then, at three o'clock the Bank Board met. Of course, there were a good many of the same Directors. After the Louisville National came in the Louisville National Directors used to stay in through the meeting of the Bank of Kentucky, and after the Bank of Kentucky meeting they would have a meeting of the Banco Kentucky, where everybody was in. There were three separate, distinct meetings; all at the same place and on the same day, but at different times. These resolutions were introduced at three board meetings, the same day.

The fourteen people from the Louisville National Bank and Trust Company were on the Louisville Trust Company Board, but not on the National Bank of Kentucky Board. They were invited to sit through the National Bank of Kentucky meetings, and welcome, and particularly if we were going to have a Banco Kentucky meeting after the Bank of Kentucky meeting they would wait, they would stay there, and be there after the Bank of Kentucky meeting when the Banco meeting came on. They were on the Banco Board.

C. C. Heatt—Cross

Judge Stites usually presided at the Louisville Trust Company meetings. He was Chairman of the Board and he presided. When that was over, he would wait for a few minutes, and then Mr. Brown, or whoever was going to preside at the National Bank of Kentucky meeting would call it to order. I have no recollection of Mr. Brown ever presiding at a Louisville Trust Company Board meeting. Either Judge Stites or Judge Quin or some of the officers of the Louisville Trust Company always presided at its meetings. Mr. Brown presided at the Bank meeting and the BancoKentucky meeting.

I was present at a special meeting of the Louisville Trust Company Board January 13, 1930. That was a joint meeting with the Board of Directors of the National Bank of Kentucky and BancoKentucky Company. The minutes say, "Mr. James B. Brown acted as Chairman of the meeting," but it was signed by John Stites. Judge Stites was very regular and always presided at the Louisville Trust Company Board meetings. I think I remember this meeting; it was a joint meeting for some special purpose, and I think Mr. Brown took the chair and stated the purpose. I imagine it was entered in the minutes of all three. Though the National Bank of Kentucky minutes and Banco minutes have no reference to that, I have no recollection of how it was recorded.


There was a sort of gossip on the Board that Mr. Brown was a sort of silent partner in Wakefield and Company. I had heard that for a good many years, that Mr. Brown was a partner in Wakefield and Company or had some interest in the concern. It was never more than gossip. I never learned anything to justify the gossip. As a matter of fact, after the Bank closed, I found out very definitely that he was not a partner and that the Company was owned by Mrs. Latta exclusively.

C. C. Heatt—Cross

The name "BancoKentucky" was suggested by the National Bank of Kentucky, or Bank of Kentucky. It was copied, I think, after what I said awhile ago about the BancItaly; the Bank of Italy organized the BancItaly Corporation, or something of that kind. The National Bank of Kentucky had been a state bank for many years before nationalization, I think around the early part of the century, and it was, I imagine, sometimes called the Bank of Kentucky, or the National Bank of Kentucky. I sometimes called it the Bank of Kentucky—sometimes I try to shorten things. It was frequently called the Bank of Kentucky.

The appraisal Mr. Crawford showed me is an appraisal of the Kentucky Wagon Manufacturing Company, as of May 11, 1928—of its real estate period. It doesn't show liabilities. It was not an accountant's report at all. It was merely an appraisal of the real estate holdings of that company, as of that date. There would be nothing in here to indicate that the company then had \$5,000,000 in liability and was insolvent to the extent of several million dollars. I would not know that. That would not be reflected in that appraisal. It only means that in the opinion of the appraisers, the real estate which they owned had that value at that time.

The appraisal was made on a fair market value basis as of that time. Effect was given to reproduction cost and depreciation; we took that into consideration in our appraisal of that character, and checked them off against the other factors, and our knowledge and information of sales of property and all of that. I have seen a great many of the American Appraisal Company's appraisals. We did not follow that method. I have never felt like it was a fair method to arrive at the value. It is all right for insurance purposes and things of that kind, but I differ very widely with it on property values. I am thinking about what it would sell for. I am also familiar with appraisals for high-



C. C. Heatt—Cross

est use value. An appraiser will always give effect to its value when adapted to its best use, and consider that in arriving at its fair market value. We did not appraise this property for its best available use, but it was adapted, I think, to the business which was being conducted there, so, as I said awhile ago, I saw about twenty-five to thirty per cent of the capacity of the plant was actually being used in manufacturing for which it was adapted. That was May 11, 1928. They were then manufacturing truck-bodies and trailers, coach bodies and some farm wagons and furniture,—quite a number of articles. The foundry plant was operating when we were out there. We spent several days out there and the foundry was operating and making, I think, gray iron castings and drop forgings, and I am pretty sure that at that time we were given information that they were selling a good many of those castings and drop forgings, because the capacity of the foundry was larger than the needs of the operation. They were selling them to the Ohio Falls Iron Works, and the Henry Vogt Machine Company.

As I recall, there was a group of frame buildings at the eastern extremity of the property that had been put up during the war period, and also a brick building in the center. I have known that plant for a good many years, in fact, I knew the plant before it was ever moved out there. I was out there frequently during the war, at which time Colonel Board, who was the manager, was in charge, and a woodworking representative of the Government. As I recall, a part of the frame buildings were being used for a furniture factory. The brick building in the center I don't think was being used at all. They had quite a surplus of capacity. The plant was running only about 25 or 30 per cent of what it could accommodate.

I would say that numerous efforts have been made to sell it for a number of years and that nobody would buy it.

Stanley P. McGee—Direct

Of course, I never had any interest in the property as a property, until 1927. The Bank never effected a sale of that at any time I was on the Board. There were several efforts made to sell it, but none prior to my appraisal. I think they had a deal on for it then, and that was the reason they wanted this appraisal. They had just got title to the land and buildings in December, 1927, I think it was, when they got title to the land the buildings and got it out of the old National Motors or Associated Motors situation.

What I recall about Blythe and Company was a statement made in the Directors' meeting about a contract that had been made with Blythe and Company. I never saw Plf's Ex. No. 173, a circular printed by Blythe and Company in the course of its efforts to sell Banco Kentucky stock. You show me Exhibit 172, a letter sent out by the local office of Blythe and Company in great numbers. I did not receive one of those.

Stanley P. McGee,

called for Defendants, examined by Mr. Dietzman, testified as follows:

My name is Stanley P. McGee. I am a member of the firm of Humphrey, Robinson and Company, and am a certified public accountant, and have been about a year and a half.

I made the schedule which you show me, purporting to be the net deposit liability of the National Bank of Kentucky, as of November 17, 1930, to the stockholders of Banco.

Said Exhibit was received in evidence and marked for identification "Defendants' Exhibit No. 22."

This exhibit was made from the stockholders list and checked against the claim record of the Receiver of the National Bank of Kentucky. It accurately reflects the net

Walter Girdler—Direct

deposit liability, so far as the books of the National Bank of Kentucky Receivers show, to the Banco Kentucky stockholders as of November 17, 1930, so far as we are able to ascertain.

Walter Girdler,

called for Defendants, examined by Mr. Crawford, testified as follows:

My name is Walter Girdler, I live in Shelby County, and do business in Louisville. My business is the Girdler Corporation, manufacturers. I guess I have been in the manufacturing business twenty-five years.

I was a director of the Louisville National Bank & Trust Company prior to 1929, and took part in the consolidation of that bank with the Louisville Trust Company in 1929. Prior to that there had been no connection between the Louisville National and the Louisville Trust Company, to my knowledge, or between the Louisville National and the National Bank of Kentucky.

Before voting for that consolidation we had audits of all three banks, I think, made by Humphrey Robinson and Company. I think we appointed a committee to make a further investigation. I think a committee was appointed to discuss the matter with the Comptroller of the Currency at Washington. I think some of our Board, acting as a committee, went up there to get their ideas about whether it would be desirable or not, and what steps would have to be taken to do it. The final conclusion reached was that it would be most helpful, from our standpoint, and to the best interest of the stockholders of all the banks involved.

I owned stock in the Louisville National Bank and Trust Company which was exchanged for the Participating Certificates in the unified bank. I don't remember when the final legal merger was completed. I went on the Louisville Trust Company Board immediately following the consoli-

Walter Girdler—Direct

dation or unification period. I remember that after we got on the Louisville Trust Company Board—how soon after, I don't know—there was talk or discussion of this Banco company.

My recollection is that it was told us that it would be a desirable thing to set up such a financial institution. My distinct recollection is that the ownership of these other banks that was discussed might be taken into such a company with more or less a means to an end, and certainly not the thing that would yield the greatest profit. I think the thing that made me invest a substantial sum of money, additional sum of money, was the hope of profits that might be made from dealing in securities and underwriting securities, rather than the owning of banks, and the profits from the banks themselves, because I remember the profits from the banking operations were relatively small.

I invested additional money in it. I think I had 2,200 shares of Banco stock, but I am not sure of this,—I think this is approximately correct,—that I got 2,200 shares of Banco in exchange for my participation certificates, and I bought 2,800 additional shares at \$25.00 a share. I bought those as soon as the stock was available.

I certainly had no notion at that time, and received no information that led me to believe that the Bank of Kentucky or the Louisville Trust Company was in any financial trouble. On the contrary, I thought it was the most substantial financial institution in the South. I first found out that there was any trouble in the National Bank of Kentucky on Sunday night—I don't remember the date. I remember I was down the river duck hunting and they called me up Sunday night and told me the Bank of Kentucky would not open Monday morning. I think I had deposits in both the Trust Company and the National Bank of Kentucky.

Walter Girdler—Cross

I didn't ever hear any discussion during the time of the formation of Banco, that it was considered that by trading Trustees' Certificates for Banco stock a possible liability or assessment on bank stock would be avoided. I never heard any kind of discussion at any time involving the idea that by the formation of Banco double liability could be evaded or avoided. I don't think I was even conscious of the fact that there was double liability. If I had been it would not have bothered me because of my confidence in the Bank of Kentucky and the Louisville Trust Company. I never saw or heard of any letters from anybody discussing that. I never saw the letters purporting to have been written by Mr. Bean.

Cross-Examination by Mr. Marx

On Cross-Examination by Mr. Marx, Mr. Girdler testified as follows:

I don't know how much stock I owned in the Louisville National Bank & Trust Company. My recollection is that I owned \$25,000 to \$30,000 worth of the par value of the stock. I don't remember, I may be very much mistaken about the dollars and cents. That is a matter of record. I mean, I could get it.

I heard Mr. Hieatt testify that he sold some stock for \$495.00 a share, as I was sitting there, and it came to my mind that I had paid \$250.00. But that may be wrong. I can get that information. I think I also have some National Bank of Kentucky stock. You want the cost price of my Bank stock.

As a Director of the Louisville Bank & Trust Company I am not conscious of having thought of the fact that practically our entire capital was invested in 421 West Market Street before the merger. I knew the building cost, or we were told that the building was going to cost something

Walter Girdler—Cross

like \$850,000. I haven't any recollection of a discussion by Mr. Bean that one of the disadvantages of putting up the building was that we would freeze such a large percentage of our capital in the bank building.

I don't remember Mr. Bean presenting a letter to us, which became part of the minutes of the Board of Directors of the Louisville National Bank and Trust Company on August 16, 1927, in which he said,

"our present rent is \$8,000 and depreciation \$5,000. The alterations in the present building and new furniture will cost \$40,000 and amortizing that through the fifteen years, our rent will be \$20,000 to \$23,000 in enlarged old quarters.

In a new building containing 17,000 square feet instead of 8,000 square feet, our present space, our expenses, depreciation, $4\frac{1}{2}$ per cent interest on investments, will total \$36,000, so the new home will cost from \$13,000 to \$16,000 a year more than the enlarged quarters.

We will have invested \$550,000, which is one-third of our capital and surplus."

I know the question of putting up that building was given a lot of consideration, we had men on the Board, who in my judgment were quite sound business men, and all the angles and phases of the question were considered; and we finally decided it would be to the best interest of the institution to put up such a building.

I can't explain that it was represented that the building would cost \$550,000 but after we got into it it cost \$850,000. But I do know that the plans were changed, I think, to accommodate the Louisville Board of Trade. Whether that anything to do with it, or not, I don't know; it is too far back for me to remember accurately, but nothing was done in the way of increasing the amount invested in the building without the full knowledge and consent of the Board of

Walter Girdler—Cross

Directors, and I know the Board well enough to know that they did it because they considered it wise, the sound thing to do from the standpoint of the institution.

I don't remember that our capital was \$750,000. I didn't know that when we traded in we got 7,500 shares of Louisville Trust Company stock in exchange for 7,500 shares of Louisville National Bank & Trust Company stock. There is no question that our capital was \$750,000. My recollection is that the building cost \$850,000. That was the building, equipment and furniture. I assume we had about \$115,000 in furniture and the real estate. That figure, \$850,000 is the lot, building, furniture and equipment.

By virtue of our acquiring Trustees' Certificates, we got into the Louisville Trust Company and the National Bank of Kentucky picture. I would have got into the picture had I not been on the Board and had I not been a stockholder in the Louisville National, because I think I was a stockholder in the National Bank of Kentucky. I was on the BancoKentucky Board, too.

Plaintiff's Exhibits 174 and 175 bear my signature, and I wrote the address on 174. I haven't the slightest recollection when I signed them. I knew what I was signing, I usually do.

I must have seen the letter of July 19, 1929, Plaintiff's Exhibit No. 24-3. I haven't any recollection of it. There is nothing familiar looking about it. I am sure I must have seen it. My name is on it. That is the letter to the stockholders,—to the holders of Trustees' Participation Certificates.

I don't think I was on the Advisory Committee to the Trustee. I haven't any recollection of it. You show me Plaintiff's Exhibit No. 8, a document dated July 3rd. My signature is on it. That doesn't refresh my memory that I was on the Advisory Committee. Let me read it. It seems to me that that is the committee of the whole. There wasn't

Walter Girdler—Cross

any—I was selected as one of a small group to make up a committee. This appears to me to be the entire Board, who signed this thing. "Constituting a majority of the Advisory Committee,"—that did not register when you asked me. I haven't any recollection of this, but I signed it, and I must have read it at the time.

I assume these Directors of the Louisville Trust Company and the National Bank of Kentucky and Banco did run the thing they were authorized to run; Directors usually do. They were not the same individuals in three different capacities in every case.

I was a Director of the Trust Company and of Banco, and a member of the Advisory Committee. I think technically it is a committee of the whole, that is the way it looks to me, with all those signatures on here. I certainly don't remember being a member of a small committee or group and doing something and reporting back to the Board; I was never in such a position.

In the absence of the shareholders themselves telling the Trustees what to do about voting the stock under the Trust agreement, I imagine the Directors acted in such a capacity. I am not sure of that. I didn't know that there weren't any shareholders at this time, other than the Banco Kentucky Company. I signed that document and the letter of July 19 is attached to it. I had just forgot.

I was never conscious of double liability, I said awhile ago. I said I didn't know whether I knew about it or not, and if I did I wasn't conscious of it.

Said exhibits were marked for identification Plaintiff's Exhibits 174 and 175 and received in evidence.

I have brought with me the statement of the acquisition of my bank stocks as shown by my records. This is a transcript made by a young man in my office from the original records. I brought the original records down here. There was a discrepancy of 2750 between these figures my

Walter Girdler—Cross

man prepared and the bank's, and he could not locate it. This man over here apparently has located that discrepancy, Mr. White.

Said paper was received in evidence and marked for identification "Plaintiff's Exhibit No. 182."

I would like to explain that this shows my memory yesterday was a little faulty. You asked me how many shares of Louisville National Bank stock I had and I told you I thought I had \$25,000 invested. Also I told you I thought I had about \$5,000 invested in the National Bank of Kentucky. The record shows I had \$48,000 invested in the National Bank of Kentucky, and \$5,500 invested in the Louisville National. Another discrepancy in my statement yesterday and this record is that I said yesterday my recollection was that I exchanged my Trustees' Participating Certificates for 2,200 shares of Banco and that I later purchased 2,800 shares of Banco; it is just the reverse, I exchanged for 2,800 and later purchased 2,200.

I don't know whether I said yesterday that the banks acquired by Banco were a means to an end. That may not be a correct description of it. What I meant was this, that my recollection of the purpose of those banks, or control in those banks—I mean by that the banks in Cincinnati and wherever else they may have been—on the basis of the purchase price the earnings of those banks returned a relatively small sum of money, anywhere from 6 to 10%, and that the thing that made me buy additional stock was not the possibility of earning six to ten per cent out of those stocks, but the potential possibility of the investment and financial activities of the Banco Kentucky Company, rather than the dividends it would receive from these banks. The banks made possible contacts and were a means to an end. In other words, they would make it more possible for Banco's investment and financing departments to make money, but in themselves they would not make so much.

Walter Girdler—Redirect

Through the use of the banks in the group and the banks' facilities and by way of contact or the ability to contact persons along the line of underwriting, it was anticipated that further money would be made through what is sometimes called investment banking.

Redirect Examination by Mr. Crawford

On Redirect Examination by Mr. Crawford, Mr. Girdler testified as follows:

I transferred some Participating Certificates for Banco-Kentucky stock. I did not retain any control over those Certificates after I transferred them. I gave up my control of those and took the Banco stock in place of them. There was no agreement of any kind that I had with Banco that gave me any control, other than what legally might be, of those Certificates. When I gave them up I gave up my control, and took my control in Banco.

Recross Examination by Mr. Marx

On Recross Examination by Mr. Marx, Mr. Girdler testified as follows:

I was a stockholder in Banco and I was no longer a stockholder of participation interests in the Louisville Trust Company and National Bank of Kentucky. What I gave up was not control, it was interest. You call my attention to the fact that the letter of July 19, 1929, in No. 7 says:

"It is an essential part of this reorganization that the shares of this corporation (or at least a substantial majority thereof) be owned by the Trustees' Participation shareholders, and that it be managed and operated by the Boards of Directors and the officers of the two banks."

Walter Girdler—Recross

I was one of the Directors. The letter says in 8-B:

"It is an essential part of this plan that the entire plan of reorganization, and the deposit and subscription privileges and rights hereinabove set out, are all, and each of them is, conditioned expressly upon the acquisition by the Trustees' Participation shareholders, either by deposit or exchange, or by direct subscription as above, of at least a majority of the shares of the BancoKentucky Company: And further conditioned upon the acquisition by the BancoKentucky Company of at least a majority of the Trustees' Participation shares issued and outstanding as of September 19, 1929."

Technically, I guess I did retain, through BancoKentucky Company, control of the Trustees' Participation Certificates, to the extent that that is legal. I have been through things like that before and I think at the time this was done I sold the business here in Louisville and exchanged our stock for stock of the Air Reduction Company. It wasn't actually a reorganization because all of its officers and what-not were no longer stockholders in that company, but we exchanged our stock for stock of the company that bought our company, and to the extent of our interest in that parent company, which I then held in the other company, I participated in that interest.

I mean that through directorship in Banco I would have a voice in the management of the affairs or control.

The Court: Through that directorate you would have a voice in the management of its subsidiary or other corporations of which Banco owned the stock?

A.—That is right; the directors of BancoKentucky certainly directed the affairs and policies of that company, and of its subsidiary companies, which were these banks.

George O. Boomer—Direct

Redirect Examination by Mr. Crawford

On Redirect Examination by Mr. Crawford, Mr. Girdler testified as follows:

Prior to my transfer of the Trustees' Certificates to Banco, I was under no contractual obligation of any kind that I could not sell them at any time I wished.

After I transferred my Trustees' Participation Certificates to BancoKentucky I had no contractual right to require Banco to sell those identical certificates to any one I wished. I had no contractual right to require Banco to sell any other certificates that Banco had.

George O. Boomer,

called for the Defendants, examined by Mr. Van Winkle, testified as follows:

I was a director of the Louisville National Bank and Trust Company prior to its consolidation with the Louisville Trust Company. I recall the facts in reference to the consolidation. I was a director of the Bank and sat in with Mr. Bean on one or two meetings with Mr. Brown in which the matter was discussed. I think the Louisville National Bank denationalized before the consolidation was effected.

I don't know exactly what the prevailing market value of Trustees' Participation Certificates at the time those negotiations were entered upon. My recollection would be around \$350.00 a share. I would imagine the then market value of the Louisville National stock was about the same. I have no recollection about that.

The discussions in reference to the organization of the BancoKentucky Company began sometime in the spring of 1929, probably around March or April. I don't know how many conferences with regard to the organization Banco I participated in, but a great number of them. At those

George O. Boomer—Direct

conferences, in a general way, I would say the Directors of the Louisville Trust Company and the National Bank of Kentucky were present. That includes the Directors of the former Louisville National Bank and Trust Company.

The object and purposes actually to be undertaken by Banco as disclosed and agreed upon between the parties as a result of these various conferences in which I participated were in the first place, it was to provide a vehicle for the extension of the Bank into other banks and to do a lot of other things that banks could not do. One of the principal things, as I recall it, was the plan to do a general investment banking business, and by that I mean to participate in underwriting issues of securities, because it was the general consensus of opinion, I think, among the Board that there was a wide variety of financing in this general section of the country that could be done by an institution with sufficient funds and properly set up to do it.

In connection with these various conferences, up to the time the Banco charter was directed to be prepared and filed, there was no discussion or consideration at any time of the matter of double liability being imposed on the stockholders of Banco Kentucky. None that I ever heard. I doubt that I was acquainted with the charter itself. I don't recall it.

I can speak from my own experience in this. I have participated in a couple of reorganizations. I know there was a reorganization where one company had taken over another and I was familiar with the fact that the word "Reorganization" was used in the tax law, and that that was the purpose of this word in this phrasing that has been referred to here. I mean, there was no question in my mind about the intent of the word "Reorganization" in that letter. That was my understanding of it personally. Following the discussion that was had by these gentlemen who were

George O. Boomer—Direct

interested in the organization of Banco, I would say that was the intention of that body in forming that company. It was explained to them from that standpoint.

At the time of the consolidation of the Louisville National with the Louisville Trust, I can't recall exactly how many shares I held in the Louisville National, but I do recall that I had the equivalent of 4000 shares of Banco-Kentucky before Banco was formed. I may have had some Trustees' Participation Certificates before that; I don't recall. Most of it came from the Louisville National Bank stock which I owned.

I exchanged all of the Trustees' Participation Certificates for Banco stock. At the time Banco was formed I bought an additional 1000 shares which made the equivalent of 5000 shares of Banco-Kentucky. I sold 2000 shares in the summer of 1930 and held 3000 shares at the time Banco closed. Excuse me, the equivalent of 3000 shares. There were 2,800 shares of Banco and 10 shares of Louisville Trust Company stock which I held, which was equivalent to 200 of Banco, making 3000. I held that for the purpose of qualifying myself to be a director in the Louisville Trust Company. I exchanged T.P.C.'s for my Banco stock except for 1000 shares that I purchased from Banco.

I did not make this exchange of T.P.C.'s for Banco stock with any view or for the purpose of evading or avoiding any liability on the bank stock. I never thought of it. At the time of the exchange for Banco the condition of the National Bank of Kentucky and of the Louisville Trust Company so far as it was known to me, was all right, so far as I knew. Up to the first day of October, 1930, my opinion and belief in reference to the financial condition of the National Bank of Kentucky and the Louisville Trust Company was that they were all right, so far as I knew.

George O. Boomer—Cross

I was a depositor in both of those banks and had been from the time I started until they closed. I had deposits at both the Trust Company and the Bank at the time they closed. I do not recall their amount or their extent. I made no substantial withdrawals from my account within thirty days of the time these banks closed. As a matter of fact, I expect the company with which I was associated had over \$100,000.00 on deposit with both at the time they closed. I had control over the deposits of those companies. I was the financial representative and conducted the banking business of those companies. I didn't control them. They were the Ewald Iron Company and the Pittsburgh Fuel Company.

I did not see or know any of the facts in reference to the letters written by Mr. Bean and some of the officers of the Louisville Trust Company in reference to the Banco Kentucky Company, that I recall.

Cross-Examination by Mr. Marx

On Cross-Examination by Mr. Marx, Mr. Boomer testified as follows:

According to the list my counsel filed in this case, I had only \$166.39 in the National Bank of Kentucky when it closed.

You show me Plf's Ex. Nos. 176, 177, 178. They bear my signature and I wrote the address on both of them. Ex. 178 is dated September 17, 1929. I haven't the slightest idea whether that date is correct. I have no reason to think otherwise. The handwriting on the left-hand corner of Ex. 178 is mine. It says: "The 1000 shares referred to herein is held by the Commonwealth Life Insurance Company, and will be deposited as soon as secured from them. An additional 900 shares has already been deposited by me." I don't know what the purpose of that note was. I

George O. Boomer—Cross

presume it was a memorandum of some kind, but I just don't recall the transaction.

Ex. 177 indicates that the signature "George O. Boomer" purported to have been written by R. Bean. That is just a subscription for 1000 shares of BancoKentucky stock, and I presume I probably telephoned him. My assumption would be I probably told him to put me down for 1000 shares of BancoKentucky and he probably signed the subscription for me. That is Mr. Bean's handwriting. He was President of the Louisville Trust Company. I remember giving him a subscription for 1000 shares, but whether it was verbal or not, I don't know.

Said papers were received in evidence and marked for identification "Plaintiff's Exhibits Nos. 176 to 178 inclusive."

I presume I knew what I signed at the time. I was a director of the Louisville Trust Company and of Banco-Kentucky Company. I never was a director of the National Bank of Kentucky but I believe I was a member of the Advisory Committee that controlled the Trustees' Participating shares. The Trustees probably had the actual, physical stock certificates in the National Bank of Kentucky, not the Trustees' shares.

I signed Ex. 8, dated July 12, 1929, which instructed the Trustees to organize BancoKentucky. I have no recollection of having signed that but that is my signature and I undoubtedly signed it. Attached to it is this letter which subsequently became the letter of July 19, 1929, the printed letter that was sent out. I don't know whether I signed that letter or not. It purports to have my printed signature attached to it. I have seen that letter and I think I recall its going out at the time, but this other, as far as signing this is concerned, I don't recall it. It is my signature. I undoubtedly knew at the time what I was signing.

George O. Boomer—Cross

I presume that there was also attached this subscription form which I signed similar to Plf's Exs. Nos 176 and 177, I don't know.

As a director of the Bank and a stockholder I presume I knew that the shares of stock in the Louisville Trust Company, in the Louisville National Bank and Trust Company and in the National Bank of Kentucky, were all subject to what is popularly called double liability. I don't think I had ever thought about it, but I undoubtedly knew it. I expect I also knew that the Trustees' Participation Certificates, which I received in exchange for my bank stock, were subject to the same liability as the bank stock.

When I signed this agreement, Exhibits 176 and 178, I doubt very much that I knew that the Banco Kentucky stock which I was exchanging my Trust Certificates for was recited to be fully paid and non-assessable under the terms of the reorganization plan. It is a form which I undoubtedly signed in order to have the stock transferred, but whether I ever noticed that in there, I couldn't say. If I did, it made no impression on me whatever.

When I, as a member of the Advisory Committee, put my name on that document, Ex. 8, I was dealing there with all the stock of what had been three banks and I was recommending it. I was recommending that it be put into Banco Kentucky. That was, in part, a holding company to hold the stock of the banks. I don't think it made an impression on me what we were doing about this double liability which I knew existed. I don't recall of ever having thought of double liability. We know a lot of things we don't think about.

I expect I read these papers. The charter of the corporation may have been read to me at a Board meeting but I haven't the slightest recollection of it now. I remember it being discussed but whether or not it was read, I don't know.

George O. Boomer—Cross

My testimony is that I have no recollection now of ever having thought of the matter of double liability in this transaction. I said I knew it at one time. I didn't say that I overlooked it in forming this company.

98—Mr. Boomer, did I understand you to say that you advised the stockholders that this plan, which you called a plan of reorganization in every paper and in every document and which you stated was to reorganize the two banks by adding a third bank, was simply a scheme to avoid income tax?

Mr. Van Winkle: I object to that. The witness has said no such thing.

Mr. Marx: I am asking him if that is what he said.

The Court: Objection overruled. Let him answer.

(The question was read by the reporter.)

A.—I did not.

99—Did you have any such idea in your own mind?

A.—I never had any idea it was any kind of scheme, and as I testified here a while ago, I was familiar with the word reorganization in the tax law, and I knew the purpose of that word reorganization in this particular letter.

100—On the contrary, isn't it true that you entered into this plan in good faith that it was a reorganization within the meaning, spirit and intent of the laws of the United States?

Mr. Van Winkle: I object to that question. The witness has stated exactly what he deemed the term "Plan of Reorganization" to mean.

The Court: This witness is on cross-examination. Objection overruled.

(The question was read by the reporter.)

Mr. Van Winkle: That calls for a conclusion of law.

The Court: No, he is asking what he understood. Objection overruled.

George O. Boomer—Cross

A.—I don't know how to explain it any more clearly than I have already done, but I know that the word "reorganization" had to be used in order to eliminate any taking of profit caused by exchange of bank stock, which was acquired at a low price for some other stock which at that time had a market price higher.

101—You did not think, Mr. Boomer, that by using the word "reorganization" in connection with something that was not a reorganization you could thereby escape payment of income taxes, did you?

Defendants objected to the question.

(After argument.)

The Court: This objection is addressed to the question of counsel for plaintiff on cross-examination. I am going to overrule the objection. You may ask him your question when you take him back, but you cannot require counsel for plaintiff to ask him that question.

(The question was read by the reporter.)

A.—That, as I understood it, was a requirement of the Federal Tax law, that it had to be shown as a reorganization, as a technical reorganization, in order to avoid the so-called profit upon the exchange.

102—That does not quite answer the question I asked you; you didn't think by merely using the label "reorganization" or the word "reorganization" that you could avoid the payment of income tax if it was not in good faith a reorganization within the meaning of the laws of the United States?

A.—It was in good faith a reorganization under the tax laws, and that was all we were concerned with here. There was no change in the status or setup of either of the banks; the Louisville Trust Company and National Bank of Kentucky—those organizations went on just exactly as they did before; there was no reorganization there.

George O. Boomer—Cross

103—But in your letter of July 19th, you said: "The conclusion unanimously reached, as a result of these deliberations, is that the two banks, and the business conducted by them, should be reorganized by adding to this group a third corporation, which will make the assets of these banking institutions more profitable, expand their facilities, and thus develop for the entire group, new and profitable financial opportunities and connections."

Now, you intended, didn't you, in good faith to do what you said in that letter of July 19th over your signature?

A.—That is merely technical; I have explained it as thoroughly as I can.

104—I am asking you whether the reorganization was a technical, legal process, didn't you intend to organize the business of the Bank in the manner set forth in your letter?

A.—I would say it was a technical legal process, and the phrase was used for that purpose.

105—Then, it was not in good faith, it was a mere technicality?

The Court: Objection sustained.

Mr. Marx: I insist that the witness answer whether or not it was in good faith in the meaning of this letter of July 19, 1929.

The Court: That calls for a conclusion. I have sustained an objection to the question. He has answered that question in his manner to several prior questions. I don't think your question presents any new request from the witness to answer.

106—I will ask you when you proposed to the Trustees' Certificate holders that this was a reorganization, as set forth in your letter of July 19, 1929, whether you meant what you there stated in good faith, or whether you were acting in bad faith?

Defendant's objection was sustained by the Court.

George O. Boomer—Cross

Mr. Marx: I think I am entitled to a categorical statement of whether this witness was acting in good faith.

The Court: He has already stated that.

Mr. Marx: He has never stated it categorically.

The Court: It isn't necessary. He states the reason he used that phrase in there, which he says was done in good faith. Now, you have asked identically the same question.

(After argument.)

The Court: Wait just a minute. Your question is undertaking to put this witness on one or the other of the horns of a dilemma; it is a question he cannot answer yes or no the way you have stated the question.

(After argument.)

The Court: Now, Mr. Boomer, you have stated that you signed that letter and that it is authentic so far as your signature on there is concerned, have you not?

A.—Yes.

The Court: Did you, in good faith, in the use of the term reorganization as used in that letter, intend to use that term? Did you intend to use the term "reorganization"?

A.—Yes.

The Court: You did?

A.—Yes.

The Court: For what purpose?

A.—To comply with the tax laws.

The Court: All right.

107—Did you at any place in this letter advise the stockholders that your only purpose in stating that this was a reorganization of the business of the Bank and the operations of the Bank—did you limit that reorganization to income tax purposes or regulations?

Mr. Van Winkle: I object. The letter speaks for itself.

The Court: I think he may answer that, whether or not there is anything in there. It does speak for itself, but we

George O. Boomer—Cross

are discussing this letter from the standpoint of its purport and intent when it was sent out.

(The question was read by the reporter.)

A.—I will have to read the whole letter to answer that question.

The Court: All right, read it.

A.—No, sir, I don't see anything in there to that effect.

108—Did you say yourself to any stockholder that the statement made in this letter of July 19th, 1929, Exhibit 24-3, with reference to reorganization, was limited to a mere technical compliance with the income tax laws, or the regulations of the United States?

A.—I don't recall. It was done for their benefit, so that they would not have to pay any income tax upon the exchange when they had not disposed of their bank stock or securities or its equivalent. Whether I talked to anyone about it, I haven't the slightest idea.

109—Do you recall anybody you talked to about it?

A.—No, sir, I don't.

110—Did you see Mr. Vaughan's letter, the opinion of your counsel, on this subject, stating that it must be made to appear throughout to the stockholders as a mere exchange of one form of security for another form of security representing the same property?

A.—I don't recall any such letter.

111—I will show you the letter, Ex. 25-5:

"In other words, the issue and delivery of two shares of stock of the Company, for one Trustees' Participation Share, must be made to appear (so far as the Bank's stockholders are concerned) as a mere receipt of the same property in another form, and not as a closed transaction, wherein they part with one species of property in exchange for an entirely different species of property."

— *George O. Boomer—Cross*

A.—What was your question? You asked me if I ever saw this letter?

112—Or if it was read to you.

A.—I don't recall ever seeing this or hearing it, but undoubtedly it was necessary to do that. I may have seen it; I don't recall it.

113—Then you were in good faith setting up a corporation which would do what your counsel said you must do, that is, a corporation whereby you would deliver two shares of stock for one of the shares of the Bank stock, so that the stock of the reorganized company, or the company called a reorganized company, would be a receipt of the same property in another form?

Mr. Van Winkle: I object to that as being argument and calling for a legal conclusion, and based upon a letter that this witness has never seen.

The Court: I don't understand the question.

(The question was read by the reporter.)

A.—That is a little bit involved—

The Court: Objection sustained. I think you are undertaking to have this witness state that it was the intention, or his purpose, to do what you interpret that letter to say. Now, you may ask him the question directly, but not in that form, as to what you have paraphrased that letter to mean. He says he hasn't seen the letter, that he recalls of, before this time, or that it was shown to him. He certainly should not be examined to that extent on something with which he is not any more familiar than this. Look at it on the witness stand. You may cross-examine him on what he intended to do and on what he said he intended to do but not in that way, making it vouch for that letter.

114—You were intending in good faith, were you not, Mr. Boomer, to set up a corporation which would reorganize your holding of bank stock so that the same persons would

George O. Boomer—Cross

receive in exchange for their Trustees' Certificates shares of stock in the reorganized company, which reorganized company would hold the same property that had previously been held by the Trustees' Participation Certificate holders?

Defendant's objection was sustained by the court.

115—Mr. Boomer, you were endeavoring in good faith to carry out the advice of your counsel in causing a bona fide reorganization of the business and operations of the banks to be made, and of its stock holdings to be made in accordance with the plan set forth in that letter of July 19, 1929, that you signed?

Mr. Van Winkle: I object. That is the same question he asked him a dozen times.

The Court: I think it is the same thing. You went over it a while ago.

Mr. Marx: This relates to his secret intent. He never disclosed his intention to anybody. I asked about whether he ever talked about it to anybody and he said no, and now I am asking him about what he intended.

(After argument the question was read by the reporter.)

The Court: Objection sustained; I think this witness has stated a time or two here on cross-examination his purpose and intention in sending out that letter and in signing that letter. I can see no reason for continually asking the same thing in perhaps a different way, questions that he can hardly answer yes or no without explaining, and giving exactly the same explanation he has heretofore given.

(After argument.)

The Court: Did you intend to reorganize the banks as set forth—

Mr. Marx: (Interrupting.) And their business.

The Court: (Continuing.) —and their business, as set forth in that letter of July, 1929?

George O. Boomer—Cross

A.—I would say so, by adding BancoKentucky Corporation to that group. I think that is what is referred to when it speaks of more profitable operations.

I do not have here a record of my own stockholdings. On December 8, 1928, I got 40 Trustees' Participation Certificates; on January 1, 1929, I got 60 more; and on Feb. 7, 1929, I got 15 more, making a total, when split ten for one of 1150 Trustees' Participation certificates.

I don't recall how many shares of Louisville National Bank and Trust Company stock I owned. I do recall this, that before Banco was formed I had the equivalent of 4000 shares of Banco and I acquired an additional 1000, but how I acquired the Trustees' Participation certificates in the interim, I haven't any idea. My first stock in the Louisville National was acquired in the early 20's. I am sure of that. I don't remember what I paid for them. That was before I became a director. I don't recall what the memorandum you are asking for is all about. If it makes any difference I will endeavor to look it up. I can tell you this, I got 4000 by exchange and 1000 by purchase. I don't recall that I borrowed the money to purchase the 1000 shares. I did not borrow the full purchase price of this stock from the Louisville Trust Company on this collateral alone. I had a loan there with better than two to one collateral. It is entirely probable that when I acquired this Banco I was permitted to increase my loan.

The statement in my answer is correct:

"That the defendant, George O. Boomer, was the owner of 4800 shares of stock in the BancoKentucky Company, which were acquired by him, first, by exchanging Trustees' Participation Certificates representing 1900 Participation Shares for 3800 shares of BancoKentucky stock, and second, by purchasing 100 shares from the Banco Company."

George O. Boomer--Cross

"Said George O. Boomer sold 1000 shares of Banco Kentucky stock on June 12, 1930, and 1000 shares of said stock on June 30, 1930, which left the defendant Boomer with 2,800 shares of Banco Kentucky stock when the National Bank of Kentucky and the Louisville Trust Company were closed."

I will look up what the bank stock I owned and traded in cost me. I will endeavor to locate it.

I was present at several meetings when the Caldwell & Company was discussed. As I recall, I was not present at the meeting when the contract was approved. I was present at the meetings where the contract was discussed and practically agreed to, subject to it being gone over by the lawyers. I believe a committee was appointed to value the assets before the deal was to be finally consummated. I think somebody made the motion suggesting a committee to assist Mr. Brown in the valuation of the Caldwell securities. The motion was made by Sam Stone and seconded by Stuart Duncan. It consisted of Mr. Vaughan, Mr. Jones and me.

The committee did nothing. May I explain why? As I recall the contract with Caldwell and Co. specified that a valuation of those securities should be made somewhere within a twelve month period, and also, as I recall, the original contract, I think, discussed by Mr. Jones, recited that he and Mr. Caldwell were to evaluate those securities, and I remember objecting to that. I remember stating that in my judgment that was a responsibility which the whole Board should assume. I remember further saying that my position would be the same even if J. P. Morgan was President of the National Bank of Kentucky and that I thought it was a function the whole Board should assume. There was a lot of discussion about it, and more or less as a compromise, that motion was made. I do remember stating

George O. Boomer—Cross

afterwards that that was a job which would take months of time and that I didn't have the time, and that we should get some expert to value all the securities and others to evaluate the bank's and try to arrive at some—

We never employed any expert to make those evaluations. Mr. Caldwell was to state some time in a year when the valuation was to take place. We did not withhold all of the stock of BancoKentucky from Caldwell until that valuation had been completed. I believe they only withheld 200,000.

I knew then that there were a number of banks which were owned or controlled by Caldwell & Company. I knew then that we were affiliating the BancoKentucky Company chain of banks with the Caldwell & Co. chain of banks. I would say that that was one of our purposes. He had a lot of—controlled a great many things, as I recall it, banks, insurance companies, and at least some industrial companies. When we made this affiliation of the banks in the BancoKentucky chain with the banks in the Caldwell, we did not have any statement of those banks before us. I never had any statement, any financial statement, prepared by Caldwell and Company before me. Mr. Brown had a lot of figures that he said had been given him by Caldwell.

"145—The only thing in the world that the Board of Directors of Banco, which was the Board of the National Bank of Kentucky and the Louisville Trust Company—wasn't it?

A.—Yes, with the exception of some officer directors.

146—(Continuing.) Had before them, was Mr. Brown's verbal statement that he had received some figures that Caldwell gave him: Isn't that correct?

A.—So far as I know."

I never saw Caldwell in my life. The Board did not have Caldwell up here before them. The Board entrusted those

George O. Boomer—Cross

negotiations to Mr. Brown and Mr. Jones, I think, they were the only people that saw Caldwell, so far as I know. I think the Board knew they were the only people that had seen him. On the strength of that we were willing to trade on the basis of \$25 a share for Banco stock. I don't know how many shares of Banco we were to trade. I think it was about 800,000 shares.

As a matter of fact, I don't think I knew until the last week or so that the stock was going to be transferred to Caldwell before the valuation took place. I remember distinctly stating in the Board meeting that in my judgment we should have this contract gone over by lawyers with a fine tooth comb to make sure that we could not get hurt.

Report of the Special Committee on the sale of Cincinnati banks was received in evidence and marked for identification "Plaintiff's Exhibit No. 179." Defendants' objection thereto was overruled.

Mr. Boomer's statement of the cost and dates of acquisition of his stock was received in evidence and marked for identification "Plaintiff's Exhibit No. 183."

BancoKentucky Company was not talked about before the Louisville National merged with the Louisville Trust Company. The agreement for the merger was made in January, as I recall it, but not completed until May. In between those two dates there may have been some discussion of it—I think it started along in April.

Mr. James B. Brown, the President of the National Bank of Kentucky, conducted the negotiations regarding the merger of the Louisville National and the Louisville Trust Company, for the Louisville Trust Company. He was the first man I ever heard mention BancoKentucky Company. So far as I know, he first originated it and advocated it.

I think it is correct in a general way that he was the one whom the Directors entrusted with the formation of

George O. Boomer—Cross

the detailed plans for the organization of Banco Kentucky Company.

When I was defining the purposes to be undertaken by Banco Kentucky Company and said "In the first place it was to be a vehicle for the extension of the banks into other banks and to do the things the banks could not do," I did not mean the extension of the National Bank of Kentucky and the Louisville Trust Company. I meant the extension of our interest into other banks, such as the Covington bank and Cincinnati banks and Paducah, etc., that we afterwards purchased. Our interest at that time was the National Bank of Kentucky and the Louisville Trust Company.

The idea was this—of course, you have got to go back to 1929 to get the picture—there were banking groups springing up over the country which had not only their home office, but had acquired an interest in various banks. This idea was to extend our interest outside of Louisville into other centers. That was what I had in mind in quoting that language there.

Through the vehicle, as I put it, of the Banco Kentucky Company, it was planned to extend our group interest into these other banks which we subsequently acquired. About the other groups that I spoke about that were being talked about in the company at that time was the BancItaly Group. That was known as the Gianninni chain, that was one of them. I am not sure whether it was BancItaly or BancAmerica Blair. I may have known about BancOhio, the Wolf interest in Columbus, Ohio, in a general way, but I had no specific information about it. I knew about the Guardian National Bank or the Guardian Union Group, Inc., in Detroit. I knew about Wisconsin Bank Shares in a general way. I assumed they were in existence at that time. I knew of the First Wisconsin National Group.

George O. Boomer—Cross

This matter of group banking was being discussed pretty generally in banking circles at that time. I think possibly there was a good deal of chafing against the restraint on branch banking. As I recall it, Mr. Brown expressed himself as in favor of group banking, and as against chain banking.

I could not say that bankers regarded the system in that particular as antiquated and not in accordance with the modern trend. I think the feeling was that the trend certainly, at that time, was toward larger banking groups and that was one of the purposes of this formation of Banco-Kentucky. It would permit us to extend our group interest.

I don't recall that it was ever discussed that they wanted to keep these other groups or chains from coming into this territory. There might have been something about the threatened competition of eastern chains. It is entirely possible.

There was no intention or purpose to trade in these bank stocks, that is buy them at a low price and sell them at a high price, that I ever heard of. Our purpose was to keep them. To hold them.

We certainly had every idea of getting a working control, I would say, of the banks we purchased. Working control of large corporations today does not necessarily mean a majority. A compact minority in a large corporation can exercise what is called working control. The wider the stock is held, I presume, the more that is true.

I presume I would have felt it was desirable to have 50% of the stocks of the banks we were acquiring but I don't know whether the actual, legal control was in our minds at that time or not. I don't recall what proportion of the stocks were acquired in the Brighton and Pearl-Market Banks in Cincinnati, in the Paducah Bank and Mechanics Bank and Security Bank and these other banks. I

Horace A. Taylor—Direct

don't think I ever knew any of the Directors in any of these other banks outside of Louisville and I don't recall having voted for them. I doubt that the Banco Kentucky Company, through its control of these banks, named the Boards of Directors for all of the banks we controlled. I don't know if we had any annual meetings after we acquired them or not. I don't recall that Banco Kentucky had a majority of all these banks. It may have come up in the Board, a discussion of the election of the directors in these other banks. I don't think I knew Mr. Brown was a director in every other bank we owned, I may have.

Horace A. Taylor,

called for Defendants, examined by Mr. Dietzman, testified as follows:

My name is Horace A. Taylor. I am in the drug business and have been in it for thirty-three years.

I was a director of the Louisville National Bank and Trust Company at the time it consolidated with the Louisville Trust Company in the spring of 1929. As a director I participated in the negotiations that led up to the merger of those two institutions. At that time I considered the financial standing of the Louisville Trust Company to be very good and that of our own institution to be very good.

In the spring of 1929 I participated in the negotiations that led up to the formation of Banco. When the Trust Company and the Louisville National were merged I became a director in the Trust Company. As such director I participated in the negotiations leading up to the formation of Banco. I have never been a director of the National Bank of Kentucky. After Banco was formed I became a director in it and remained so until it was closed.

At the time Banco was formed and during the negotiations leading up to Banco I thought the National Bank of

Horace A. Taylor—Direct

Kentucky was perfectly sound. I had never heard of any intimation of any shaky financial conditions. Or of the Trust Company prior to the merger of my institution with that Company.

From the discussions that went on I understood the purposes of Banco—I gathered that there was need of a financial institution in Louisville that would be able to handle financial matters that banks could not handle, such business having been taken away from Louisville and into other institutions; that the formation of Banco would give to Louisville an investment banking company, and they could underwrite issues, they could set up an organization for selling securities of that kind and do a general banking business beyond the scope or limit placed on banks.

During those discussions leading up to the formation of Banco I do not recall anything being said about the matter of double liability on stock. That was not ever discussed at all to my knowledge. I acquired my Banco stock both by purchase and by exchange of Trustees' Participation Certificates. I never did have a tremendous amount of bank stock. I had some National Bank of Kentucky and Louisville National Bank stock prior to the formation of Banco. This I transferred to Banco stock. After that I purchased about 600 shares or something of that kind that I bought after the formation.

The reason why Banco did not engage in all the things it was empowered to do was because in setting up an organization as large as Banco, I knew that it was going to take some time to get the organization in shape to function. They were acquiring banks; they were building the organization. Those things cannot be done at once, and then, as time went on, we went into a financial crash in this country which stopped any sale of securities that Banco intended to deal in.

Horace A. Taylor—Cross

I signed the letter of July 19, 1929, that was sent out to all the Participation Certificate holders. I understood the word "reorganization" was more or less technical, that it merely meant to me that the National-Bank of Kentucky and Louisville Trust Company were going to add to this reorganization a third corporation.

I continued a director of the Louisville Trust Company until it closed. The financial structure of the Louisville Trust Co. was not reorganized or changed in any way after Banco was formed. It did not change its character of business that it was doing. It did not engage in any activities, although authorized, yet not undertaken at the time Banco was formed.

I recall the financing of the Louisville Railway Company's first mortgage bond in the spring of 1930, but not in detail. I recall the fact that the Railway Company had some bonds maturing that had to be taken care of and re-financing was necessary. I don't remember that that matter came before the BancoKentucky Company at all. I heard it discussed. My own reason why Banco did not engage in that was that Banco was not set up to go forward with it at that time. I believe at that time Banco was negotiating with Caldwell and Company to take over an interest. So far as I know, that contract with Caldwell was consummated.

39—Banco itself never engaged in the banking business per se, did it?

A.—No, sir.

Cross-Examination by Mr. Marx

On Cross-Examination by Mr. Marx, Mr. H. A. Taylor, testified as follows:

I have never testified previously in any of the cases following the failure of the Banks in the BancoKentucky chain. I was not called before the Grand Jury, either

Horace A. Taylor—Cross

state or federal. This is my first appearance on the witness stand in connection with these conferences. I have not had the matters or details of these matters specifically called to my attention in the past ten years until a few days ago when I found out I was to testify. I tried to refresh my memory of things I have tried to forget.

I came into the domain of Mr. Brown through the acquisition of the Louisville National by the Louisville Trust Company.

I am not related to Mr. Leland Taylor.

I was on the Board when they decided to put up that new building at 421 West Market Street. Mr. Bean was then our president. We figured the building would be about \$500,000 and then some additions were put on. The final figure ran close to \$850,000. That was more than the entire capital of the Louisville National.

Without having seen the original minute book I presume that it is there recited, as Mr. Bean said "The main argument against building a bank is that it solidifies our assets and fixes our location for all time to come." The stock market crash occurred in October, 1929. We moved into this building on May 24, 1929. The Trust Company weathered that—The Louisville National went through that without any trouble. It went with the Trust Company. The problem didn't come to me as a director because no such thing happened to us, but as a business man I would say theoretically that it was very necessary for them to have their assets in liquid form.

I have looked over the reports of the Federal Reserve Examiners or the State Bank Examiners of the Louisville Trust Company and I certainly saw those of the Federal Reserve examiner for the Louisville National. We saw one of the Louisville Trust Company before the merger. I never saw one of the National Bank of Kentucky. I do

Horace A. Taylor—Cross

not know the date of the one of the Louisville Trust Company. I don't remember ever seeing one afterwards. I believe we did see the Humphrey Robinson report on both of those banks, but I couldn't say positively. When I said I thought the National Bank of Kentucky was in good shape my opinion was simply based upon the general thought in the community that it was one of the strongest banks in the South.

"78—You had no personal knowledge of what its assets were or what the condition of its assets really was?

A.—No.

79—You had not heard any rumors at that time that it had more than \$2,000,000 sunk in the Kentucky Wagon Works?

A.—No, sir.

80—You didn't know it had more than \$1,000,000 loaned to a woman by the name of Mrs. Latta, doing business as Wakefield & Company?

A.—No, sir.

81—Or her clerks and employees?

A.—No, sir."

I didn't know about any of these other items that were then in the bank which subsequently turned out to be terrific losses.

With regard to Banco Kentucky's purposes, the principal person who suggested and proposed the idea of Banco-Kentucky Company was James B. Brown, I think. My impression as to what those purposes were, is information that I have received from other people, that similar institutions in other localities had been able to perform those duties to the satisfaction of their stockholders and were money makers.

I believe one of the organizations that was talked about at the time was the Gianinni Bank chain. I don't remem-

Horace A. Taylor—Cross

ber discussion about the Guardian Bank chain. Or the Guardian Group. The Northwest Bank Corporation might have been mentioned. I don't remember. I believe the Gianinni chain was called BancItaly.

It was well known to me and to my fellow Directors that the primary purpose of this institution was to first secure a majority of the National Bank of Kentucky stock and the Louisville Trust Company stock as a nucleus for a group of banks in the Ohio Valley. That was one reason. The whole plan was conditioned, in the first instance, on acquiring a substantial majority of the stock of the National Bank of Kentucky and Louisville Trust Company.

I would say that BancoKentucky took its name from the Bank of Kentucky, to identify it with this State—not so much with the bank. Popularly the National Bank of Kentucky is still referred to and was referred to then as the Bank of Kentucky.

It was also definitely understood at the outset that the money that was put in was subscriptions to stock of the BancoKentucky Company and shares of stock of Banco-Kentucky were to be used to either purchase or acquire by exchange the stock of additional banks in the Ohio Valley. It was contemplated at the outset that we would acquire one or more banks in Cincinnati and one or more banks in Covington, Ky. Negotiations were under way with other banks in Kentucky, some of which were subsequently acquired.

99—Now, when you said that this new company was to engage in a general banking business beyond the scope of the banks, you had in mind, did you not, that there were—that this new company might make loans—

Mr. Crawford (Interrupting): I don't think he said engage in a general banking business; he said a bank investment business.

Horace A. Taylor—Cross

The Witness: If I made that statement, I meant a general investment banking business, and I desire to correct it now.

I would not say that we expected this new institution to make loans to business enterprises. I say, if I remember the way I put it, that I said they were to engage in underwriting issues. Underwriting means that the underwriter makes an advance of money to some business or industrial enterprise and then proceeds on the strength of certain securities issued by the business—and the house making the loan then proceeds to market those securities. That is correct whether they be stocks or bonds. It does mean that the underwriter or underwriting house is lending its money, or advancing its money, either for the purchase of the securities of the business house or upon a pledge of the securities of the business house as collateral for the advance.

It was contemplated that the Banco Kentucky Company might engage in lending money to industrial and business houses upon the strength of securities issued by such houses, if it had that power in its charter and it was approved by its directors. The banks could also do that same business to a certain extent, but not underwrite issues.

I was a Director of the Louisville Trust Company at the time that company took a participation in this underwriting that Judge Dietzman asked me about in July of 1930. I don't recall that the Louisville Trust Company took a very substantial participation in that underwriting. I don't recall anything about the National Bank of Kentucky participating in the underwriting. I told Judge Dietzman I had heard of the underwriting, I mean of the refinancing of the Louisville Railway. Whether it was before this Banco Board or some place else, I don't recall.

I said on direct examination, the reason Banco Kentucky did not participate in that syndicate was because they were

Horace A. Taylor—Cross

not ready to go forward with it because it was not yet set up. That would be correct on that refinancing or any other thing that came up at that time. That was a year after Banco had been organized. If these banks in the Banco chain took some of the securities or refinanced bonds of the Louisville Railway Company, it was done under the authority of their charter and with the approval of the Directors. Banks could participate in underwriting to a limited extent. That limit was fixed by law.

In the BancoKentucky when I said they were to engage in underwriting or banking business, beyond the scope of the banks, I meant that BancoKentucky Company would be able to make underwritings and loans without having those limits which the banking laws impose on the banks.

I don't know just how far my knowledge went on branch banking, but I knew there were limits to it. But BancoKentucky Company could engage in what was then popularly called either group banking or chain banking. One of our purposes was to acquire other banks.

I knew as a director of the Louisville National that National banks were required to keep their deposits, or a certain percentage of their deposits, in the Federal Reserve Bank as a reserve. That was so as to have that much liquid cash available in the event of a run or something of that kind. I don't remember the details about BancoKentucky Company's acting as a little Federal Reserve or a Federal Reserve for the BancoKentucky banks instead of the Federal Reserve Bank at St. Louis. The thing I do remember is that BancoKentucky would be of assistance to these member banks, or these other banks. I don't remember Mr. Brown saying that it would substitute, so to speak, for the Federal Reserve and enable us make some saving by not keeping idle money in the Federal Reserve Bank.

As a Director of a National bank I knew that National

Horace A. Taylor—Cross

Bank stock was subject to assessment for what is termed double liability whenever the Comptroller of the Currency determines in his judgment to call on the stockholders to pay that assessment. When I came into the Louisville Trust Company I knew that a similar double liability was provided by the laws of the State of Kentucky. When we voted to acquire bank stock in Ohio I knew that the Ohio laws contained some similar provision.

I exchanged my stock for Trustees' Participation Certificates. I presume I knew that these Participating Certificates were subject to double liability. I never gave it a thought.

I signed Ex. 8 and was on the Advisory Committee which formulated this plan for the BancoKentucky, the committee of the whole, as I called it, because everybody was on there. I don't know that the Advisory Committee was popularly called the committee of the whole, but I was on the Board of Aldermen for a while and when we went into session with all the Board, we called it the committee as a whole. At any rate, all of the Directors sat on it. That was the Advisory Committee to the Trustees. The document which I signed recites that the letter of July 19, 1929, known as Plf's Ex. 24-3, was attached. I presume it was. I either saw the letter or heard it read. My printed name appears here. I was familiar with that plan. I hope I knew what I was signing when I signed it.

My signature appears on Ex's 180 and 181. I also wrote the address. I haven't the slightest idea the date I signed it. At any event, I accepted and agreed to this plan of reorganization and deposited 250 Participation shares in exchange for 500 shares of BancoKentucky stock and then subscribed for 300 additional shares.

I don't know that there was a campaign among the officers of the Bank and the Trust Company to secure the

Horace A. Taylor—Cross

deposits by Trustees' Participation Certificate holders of their shares and to sell stock. Naturally they wanted to get as much sold as possible but there were so many exchanged that there wasn't much left. They had to get 51% exchanged. I presume it was part of the plan to get as many Trustees' Participation Certificates exchanged as they could and then sell as much of the balance of the stock as they could sell, but I knew nothing about any organization set up for that purpose.

On September 8, 1924, I bought 10 shares of Louisville National Bank & Trust Company stock at \$168.00; February 9, 1927, 5 shares at \$256.00; Sept. 12, 1929, 4 shares at \$200.00; Dec. 13, 1 share at \$250.00; Jan. 28, 15 shares of National Bank of Kentucky at \$393.00. My ledger shows that May 15th I exchanged the above for 250 shares of Trustees' Participation Certificates and 10 shares of Louisville Trust Company. September 1, I exchanged 250 shares of Trustees' Participating Certificates for 500 shares of Banco. Sept. 17, I bought 300 shares of Banco at \$25.00. That is all in 1929. In 1930, from my father's estate, I received 250 shares of Banco. On March 1, I bought 50 shares at $24\frac{1}{2}$. On the same date I bought 100 shares for $24\frac{3}{4}$. April 1, I bought 100 shares at $24\frac{1}{2}$. July 1, I exchanged some other securities with my brother who had received a similar amount of this from my father's estate, and secured 250 shares, which was set up at \$20.00.

After Banco closed I sold all of these shares. I got \$300.00— $\frac{1}{8}$ th or something of the kind; I don't remember what it was. When I made that sale, that established a taxable loss. I took that loss from my income tax, as against my cost prices. I went back to the bank stock and set that up as the cost of that 250 Participating shares. When I made the exchange of my bank stock for Banco-Kentucky stock, I did not report any taxable gain or loss on my income tax return.

Horace A. Taylor—Cross

A \$100 share of Bank stock was exchanged for a \$100 Trustees' Participating Certificate, par for par. Then the Trustees' Participating Certificates were split into \$10 par, so I had \$10 Trustees' Certificates. Each \$10 certificate was traded, two for one, for Banco at \$25.00.

If I had sold I would have had to declare it on my income tax, but under this plan, with the information I received from the accountant who handled my income tax, and the attorneys I employed, I was told not to do it. When the sale was made, instead of a profit, it was a loss, and I took it. That income tax has been checked a long time ago and O. K.'d. In my report to the Federal Government and in the transaction itself I acted in entire good faith.

The Louisville National Company, which we had in the Louisville National Bank, I don't believe ever engaged in any business to amount to anything. It was organized to start something, but it didn't do it. It was to sell bonds and securities—a sort of investment banking business. It was an adjunct of the Louisville National Bank. I had forgotten about that. I don't remember that every share of the Louisville National Bank stock had stamped on it that every share of that had a participating interest in the Louisville National Company.

Banco did the things that were the first things on our program. We acquired the Louisville Trust Company and National Bank of Kentucky stock and then we proceeded to use the funds derived from the sale of Banco stock to buy those other banks. I wouldn't say we exhausted our money in that way. I don't remember how the financial statement looked at that time. I don't remember that the money was all gone in November when we had to borrow money in New York. I remember some such transaction as Mr. Ormsby's going to New York and borrowing \$1,000,000 for the Banco Kentucky Company from the Chemical National Bank, but the details of it I do not.

Horace A. Taylor—Cross

I don't know that it was contemplated at the start that they were going to denationalize the National Bank of Kentucky. I told you I knew nothing about the National Bank of Kentucky. I wasn't on that board. I was on the Banco. I was on this committee of the whole. I believe both those Boards passed on the denationalization. But I am not sure. Probably if you find it there, it will recall it. Banco owned the banks.

I may have known that it was part of the original plan to denationalize the National Bank of Kentucky. I don't remember. You show me another part of Ex. 8. That is my signature. You call my attention to the following language:

"it having been determined by unanimous vote of the board of directors of the National Bank of Kentucky and the Louisville Trust Company, at their regular meeting on September 27, 1929, that it is to the best interests of the National Bank of Kentucky to surrender its national charter and become incorporated as a state bank."

That refreshes my memory. According to the exhibit you showed me, it was part of this reorganization plan to change the structure of the National Bank of Kentucky from a national bank to a state bank.

I couldn't tell you the details of the departments of the Bank which Banco was to take over, but it was intended that the Banco Kentucky Company should assist these banks in whatever they could to the benefit of the entire institution.

My answer that there was to be no change in the set-up of the National Bank of Kentucky should not be amended. I wouldn't say the corporate structure of the National Bank of Kentucky was to be radically changed. It was to be changed from the national system into the state system.

E. Leland Taylor—Direct

That was contemplated back in May, according to that exhibit.

I never heard anything about Banco having any title insurance department. It was never discussed to my knowledge.

Redirect Examination by Mr. Dietzman

On Redirect Examination by Mr. Dietzman, Mr. H. A. Taylor testified as follows:

I never saw or knew anything about the letters in this record from Mr. Bean to the employees of the Louisville Trust Company and officers and employees of the National Bank of Kentucky.

With reference to the Louisville Railway matter, that refinancing in July, 1930, was an extension of a bond issue. It had nothing to do with the stock in the Louisville Railway Company.

E. Leland Taylor,

called for Defendants, examined by Mr. Dietzman, testified as follows:

My name is E. Leland Taylor. I am President of Wright & Taylor, and have been in that business for twenty-five years.

I was a director of the Louisville National Banking Company prior to its merger with the Louisville Trust Company, and had been for six or seven years. I was never a director of the National Bank of Kentucky, but was later a director of Banco Kentucky. After the merger with the Louisville National, I continued to be a director of the Louisville Trust Company until it closed. I continued to be a director of Banco Kentucky until the last meeting we had.

E. Leland Taylor—Direct

As a director of the Louisville National I participated in the negotiations leading up to the merger of that bank with the Louisville Trust Company. At that time I knew the condition of our own institution in a general way, as a director. It was considered by us to be sound. We had semi-annual reports by auditors which different directors went over and examined and reported back. To the best of my knowledge and belief it was in a sound condition.

We also, during the course of the negotiations leading towards the merger, examined reports of the Louisville Trust Company and the National Bank of Kentucky, and we were convinced in our minds, speaking for the other directors too, that they were sound institutions, too.

During my connection with the Louisville Trust Company as a director, up to the time just before it closed, I always considered it to be a sound institution, and even today I still consider it so.

I had no knowledge or information to lead me at the time of the organization of Banco to have any idea that the National Bank of Kentucky was other than a sound financial institution. I regarded it as absolutely sound, and I had never heard a sentence against it in any way.

I participated in the negotiations and discussions leading up to the formation of Banco. As to the business that Banco was to perform, and on its creation, what business it was to engage in, it was explained to us the need of such an institution as Banco in this community; that business was leaving the State and City and section, and going to New York, Atlanta, St. Louis and other places, because we had no institution in this section of sufficient size to handle the different financial transactions that came up. It was explained to us that with the background of the Bank of Kentucky and those other banks that we could organize a new company that could not only have these banks, but

E. Leland Taylor—Direct

extend their holdings in banks to other places, and form a large enough company, by selling additional stock, to handle these matters that would be very profitable that we were losing here.

21—Could you be a little more specific in your statement as to these other matters? What did you mean by that?

A.—I mean matters such as the refinancing of buildings, or taking over bond issues for companies. There was no particular one thing; it was just as a financial institution that would take care of people that needed money and had to go to New York and other places to get it, and we would be in a position to let them have it.

I owned a few shares of National Bank of Kentucky stock which I inherited, and I sold it about 1924 or 1925. I think there were only two or three shares. Throughout the formation of Banco I owned no National Bank of Kentucky stock. I was never a director in that institution.

What stock I had in the Louisville National I transferred for Participating Certificates, which were later transferred for Banco stock, and I bought 1000 shares after the organization of Banco.

I was not a depositor in the Louisville Trust Company, but always in the Bank of Kentucky, because they had a branch in the building where my office was. My office was in the Francis Building which was owned by some of my relatives, by Wright and Taylor.

Wright and Taylor also banked at that branch, they had \$100,000 on deposit when it closed. I had control of that deposit. I had a small personal deposit, and the day before it closed I put \$20,000 in the Bank personally, to pay off a note at the Beattyville Bank. They treated it as a deposit, and I was allowed 66⅔ per cent of it.

During the discussion leading up to Banco, I never heard anything mentioned about the matter of double liability on

E. Leland Taylor—Cross

Banco or avoiding it in forming Banco. In exchanging my Trustees' Participation Certificates for Banco, the matter of avoiding double liability never occurred to me. I never thought there was any question going to come up about it. I never heard it mentioned and never thought of it.

My name is signed to the letter of July 19, 1929, which was sent out to all the Trustees' Participation Certificate holders. I remember the substance of that letter from what I have heard around here. The word "reorganization" is used in that letter. My understanding of that expression "plan of reorganization," as it appears in that letter was—I might say I never heard anything said about "reorganization" during the whole time, until our attorneys who were preparing the case said that in order to comply with the Income Tax Department ruling that it must—should be called a "reorganization," though it was not contemplated in any way to reorganize any bank connected with it.

It was understood by me, so far as "reorganization" was concerned, to reorganize the control of the banks only; the stock was owned by the Committee, and afterwards owned by Banco, but so far as I understood and knew, that was all the reorganization contemplated. I never saw any of the letters from Mr. Bean and other employees of the Louisville Trust Company to one another and to the officers and employees of the National Bank of Kentucky, which are in this record. I have heard them referred to here, but I never knew anything about them.

Cross-Examination by Mr. Marx

On Cross-Examination by Mr. Marx, Mr. E. L. Taylor testified as follows:

I said that business was going to Chicago, New York, Atlanta and St. Louis because there was no institution large enough here to handle it. A bank could hardly handle that.

E. Leland Taylor—Cross

The New York banks were handling some of that business, they were handling a good deal of it, and Chicago Banks, but they were not to be compared with our banks. I heard Mr. Hieatt testify that the Consolidated Realty Company had gone to the National Bank of Republic, in Chicago, to secure accommodations. I don't know it. I think I remember St. Louis Banks were getting some of that business. I have forgotten the details of where it went.

I just referred to Atlanta as being one of the cities that was—or that seemed to be more progressive than Louisville in getting things of that sort. Certainly a good deal of it went to Caldwell and Company of Nashville, refinancing and things of that sort. We had no similar institution here. I don't know of any in Atlanta. I don't know of any in Chicago or New York, exactly, that handled any local business, but I do know they were doing it.

And I do know the banks in Chicago, New York and St. Louis were doing that business either directly or through their wholly owned subsidiaries. In some cases they could get it on account of their size, some because of their charter provisions, that allowed them to do it.

I knew that national banks all over America were subject to the same laws. I don't know whether they were national banks—the Harris Trust Company, for instance, I don't know now, for instance, whether that was a national bank or a state bank. They handled some of that business. Chase is one of the biggest banks in America, and is a national bank. The First National of Chicago was one of the biggest banks in America. I guess the National Bank of Republic which Mr. Hieatt went to was a national bank.

If a bank was of sufficient size, it was permitted to make these large loans and underwritings, but there were a good many things, though, that were contemplated, that banks could not do. Banks could make large loans. But the Na-

E. Leland Taylor—Cross

tional Bank of Kentucky could not make larger loans than the law permitted without increasing its capital. The Louisville Trust Company was limited by law to the size loans that it could make. We could make larger loans in both the Bank and the Trust Company by increasing our capital. I never heard that mentioned as part of the Banco plan. It was not the plan of BancoKentucky to increase the capital of the bank.

I don't think it was the plan of BancoKentucky to organize a corporation under the Delaware laws with the widest powers on earth. I never knew a corporation ever organized with charter powers that were wider. But there were lots of things they couldn't do. I never knew any corporation to be organized with broader powers than BancoKentucky. But that doesn't mean it was the widest powers on earth. I don't know the powers of very many corporations. The corporation I belong to has about as broad powers. I don't know that they are broader than Banco, but it can do things Banco couldn't do,—make whiskey, for one thing. There is nothing in the Banco charter that prohibited that, if they would be licensed in the state charter. There is nothing in the Banco charter that would prohibit BancoKentucky from owning all the stock of a company engaged in manufacturing whiskey, but they wouldn't be making whiskey. I own stock in corporations, but don't consider myself to be in the manufacturing business. Although by law BancoKentucky was allowed by charter to do all these things, it could not do it in Kentucky until authorized to do business in Kentucky. I don't know it never was qualified.

The plan of BancoKentucky, while not to increase the capital of the banks, was to ~~get control of the National Bank of Kentucky and Louisville Trust Company first, and~~ all they wanted was control. One of the purposes was to sell additional stock in order to get some cash.

E. Leland Taylor—Cross

75—And it was proposed that in order to get that cash that the Board of Directors of the Louisville Trust Company and the Board of Directors of the National Bank of Kentucky would make loans to subscribers for BancoKentucky stock, if necessary up to the full subscription price of that stock, upon the collateral of BancoKentucky and such additional collateral as the lending officers thought proper?

A.—That was a matter strictly for the individual banks.

76—That is what I say.

A.—The Banco Directors did not exercise any control over that. The directors of the Bank of Kentucky—the officers of the Bank of Kentucky, I presume, with their directors' consent, established a policy of lending money, and I believe they did lend money on Banco stock, but I don't know to what per cent; I don't know whether it was 100 per cent or 50 per cent, but as far as the Banco directors were concerned, that wasn't considered.

I was a director of the Louisville Trust Company and knew that bank was also making loans to subscribers of the capital stock of BancoKentucky. I am sure also they never made 100 per cent loans on that stock. Through the medium of those loans from \$4,000,000 to \$5,000,000 of the National Bank of Kentucky money and the Louisville Trust Company's money, went out of the Bank and Trust Company and into the Treasury of the BancoKentucky Company.

One of the purposes was to use that money which came into the BancoKentucky Company for subscriptions to its capital stock in order to purchase additional bank stock, in order to complete this bank group or bank chain. That was done. Banco bought other banks with that money. It was actually done. I mean by that, that that was not the purpose, the entire purpose of getting that money; it was one of the purposes, to increase the number of banks in

E. Leland Taylor—Cross.

different cities, which was done. It was not intended that that should be the only use of that money. However, I might say, to add to that other answer, that other banks loaned on Banco stock as well as the Trust Company and Bank of Kentucky, other local banks did. The Liberty Bank is one I know of. I can't name any other. I presume all of them were doing it, and I know the Liberty did.

The purchase of these other banks with the money realized from the subscriptions to Banco stock was not done as an after thought after we organized Banco. "86—But was done by premeditated intention? A.—No, that is right; it was part of the plan." I can't tell you whether we had decided to buy the two banks in Cincinnati for seven and half million dollars before we declared the plan effective, because the periods are confused in my mind, as to when things happened.

Charles Bohmer was a director of the Louisville Trust Company.

You show me a letter on the stationery of the Louisville Trust Company, dated August 21, 1929, signed by President Bean, addressed to Mr. Jones of the National Bank of Kentucky, Plf's Ex. 29. I don't know anything about this letter, or the facts leading up to it. I don't recall any such thing as Mr. Charles Bohmer's stating at the meeting of the Board of Directors of the Louisville Trust Company, that the First National Bank of Louisville was calling every loan based on the stock of our banks, and suggested that we ought to retaliate. I may have been present, I don't know, but I don't remember anything about this. I don't know that it is a fact that the First National Bank declined to make loans on Banco Kentucky stock. It is easily possible. They were not any too friendly at that time.

I don't know whether they decided to buy those Cincinnati banks before we declared the Banco plan effective. I

E. Leland Taylor—Cross

can't imagine them going on buying banks before they were organized to buy them, or had completed organizing. It may have been done, if it is in the record, but I don't know. The money was not called for until October 1st. But they got a lot of subscriptions in before then. The subscriptions were not called before October 1st, but a great many were paid before that. I know I paid mine before then. I imagine the money was returnable if the plan was not effective, I don't know.

I was present September 20, 1929, when a "motion was made, seconded and carried, authorizing the President in his discretion, to close negotiations," for the purchase of the Pearl Market Bank and Brighton Bank & Trust Company. Undoubtedly it was done if it is in the minutes, but that is the 27th of September, and then sufficient stock subscriptions probably had been made by that time to assure its success. That is probably the reason they went on with it.

You ask me if we did not use up all our available cash, or substantially all of it, very shortly, in the acquisition of the bank. My recollection is that it did not use up all the cash. I was under the impression that we had several million dollars loaned out in what we called brokers' loans—other loans, as a sort of reserve. We were getting low, I will admit, and that is the reason we decided to increase the capital stock, to get more money, because more people surrendered their stocks in these banks than we expected to.

I haven't the slightest idea when I first heard about Banco increasing its capital. It was at some of these meetings, but the whole thing is confused, as to the relative times.

It is my impression that I paid my subscription before October 1st—that is my impression now, that I paid, because I got a loan down at Beattyville to buy the stock.

E. Leland Taylor—Cross

The plan of the BancoKentucky Company was that after they got this Banco organized, according to my testimony, they were going to take, or attempt to secure, some of this business that was going some place else by making loans which it was thought BancoKentucky could make without the legal limitations which the national bank laws placed on loans of national banks, or the state laws placed on loans of state banks. Banco would not be subject to those laws in the making of its loans. That was one of the things they intended to do.

Plf's Ex. 184 and 185, bear my signature. I wrote the address in both cases. No. 184 is dated September 27, 1929, and 185 is dated September 17, 1929. I assume the date is correct, if it was written at the time I signed these, but I don't know when this was put on there. As a business man, I should have known what I signed. I have signed a good many things I wish I had not. I think I knew what I signed when I signed these documents.

Said papers were received in evidence and marked for identification "Plaintiff's Exhibits 184 and 185."

I never saw any report from the National Bank Examiners of the National Bank of Kentucky. I never asked to see them. We saw the published statements in the paper and saw a report of Humphrey Robinson, who was considered to be about the best bank auditor. I don't remember which report of Humphrey Robinson I saw of the National Bank of Kentucky. When the negotiations were going on, they presented the report that they had made.

The report I am talking about is not when we formed the unification back in 1927. We didn't form that unification until 1927. I don't know what report I saw other than it was an Humphrey Robinson report. It was of the National Bank of Kentucky, and perhaps the Louisville Trust

E. Leland Taylor—Cross

Company, too. We were merging with the Louisville Trust Company. I probably saw that report in the Fall of 1928, because the contract, I think, was signed in the first part of 1929, and consummated three or four months later. While we were discussing it was when we saw the report. It may have been '27, or up to July '28. I don't know. As far as I remember, that is the only report I ever saw of the National Bank of Kentucky. We left the negotiations to the President and the Committee that was appointed. All I can say or do say was that my thought, and the popular notion was, that the National Bank of Kentucky was thoroughly sound.

I controlled Wright and Taylor Company. I got them to buy 6,000 shares of Banco, is one way I controlled it—whatever I said went with the company. It is a corporation, and I have been in active charge of it for fifteen years. I did not exercise control through stock ownership. I don't own a majority of the stock, I own part of it. It is a closed corporation, and my sisters own the other part which I don't own, and my wife. I own probably a little more than one-fifth. My sisters own the same amount. There are five parts. I exercise control through the consent of the other stockholders. I could not exercise control through the stock that I have, but actually I have directed the policy and business of the company for some time.

They gave me their proxies, or failed to vote, and that enabled me to elect the Board of Directors. The Board of Directors appoints me and I run the Company and that gave me control.

"144—Just the same way as the stockholders of the National Bank of Kentucky exercised control over the Banco Kentucky here, didn't they, through stock ownership?

Mr. Crawford: I object.

E. Leland Taylor—Cross

The Court: Objection sustained.

(After argument.)"

I said I did not think the question of double liability was ever going to come up. Of course, I knew Bank stock was subject to double liability, but I had never thought of it. You don't think of the storm when the sun is out, usually. If I had thought of the fact that the Trustees' Certificates were subject to double liability I would have known it, because I know that they would be. I never even thought about assessments or double liability of any kind. I expected to make a lot of money out of Banco. That would be the motivating influence to agreeing to organize the company; it was organized for profit.

149—You were willing to put more money into stocks when you knew that money was going into bank stock, because you expected the enterprise was going to be profitable?

A.—No—

150 (Interrupted)—You would not put it in if you didn't think it was going to be profitable?

Mr. Crawford: Let him answer.

A.—We put money into Banco as a corporation that was going to expand and have a big business. The banks that that company was to have—we expected that would be a small part of Banco's business before we got through with it.

151—You know, however, that your money, the additional money you were putting up, was partly, at least, going into bank stock, didn't you?

A.—Yes.

152—And you were willing to put up additional money to buy bank stock, in part, in the hope that those banks that you were to acquire, together with whatever other business the company might do, would enable you to make money, profits?

E. Leland Taylor—Cross

A.—We didn't expect to make very much money out of the banks; that was merely to be an outlet for the business that Banco expected to do. We never would have bought a bank for the money we could make out of it.

153—The banks were used as stepping stones?

A.—For a means.

I meant by my answer to Judge Dietzman about "reorganization"—it was no reorganization at all, in the generally accepted use of the term. I did not mean they were just a fake; I didn't mean it was any at all. The word "reorganization," as I understood it, was never contemplated up until the attorneys brought the papers and said that was the way it had to be, in order to comply with the Internal Revenue Department's ruling. It was explained that what we were doing would come under that provision. The plan for Banco was thought up and worked out without any mention of the word "reorganization," as I remember, and when we were getting ready to complete it, we had a good many papers to sign, that the attorneys had worked out for us and among them was one which contained the word "reorganization," and when the matter was brought up, saying there was no contemplated reorganization, it was explained that "This is understood by the Department, just what is being done, and in order to comply with their ruling the word 'reorganization' should be used in that prospectus."

Some of the attorneys said that. It may have been Mr. Helm or Mr. Vaughan or Mr. Carroll. I don't remember who the lawyer was who made this statement. It was made in the Directors Room, I think. In the Louisville Trust Building, that is where we had our meeting. I could not tell you on what day or who was present, but probably most of the Directors were present. I don't remember a single one who was present because I don't remember what day it was. Mr. Helm may have made that statement. I

E. Leland Taylor—Cross

don't know. Mr. Carroll may have made it, or Mr. Vaughan may have made it.

I can't give the exact language he used. That is the impression that I had at the time, and the impression I have today. I couldn't give you the exact language. I do know there was never contemplated any change in the set-up of the Bank of Kentucky or the Louisville Trust Company, and that their organizations were to continue just as always. Whatever this reorganization may have meant, it certainly did not contemplate any change in the Bank of Kentucky or the Louisville Trust Company, or any of the other banks they bought.

173—Now, let me refresh your recollection as to what actually occurred: Isn't it a fact that the original plan was different than this, and the matter was then referred to Mr. Robert Vaughan for his opinion as to whether you would have a taxable gain or loss under that plan if you transferred your certificates to Banco Kentucky?

A.—That does not refresh my memory.

174—Isn't it a fact that Mr. Vaughan then studied the question in connection with the firm of Miller and Chevalier, of Washington, and then, upon Mr. Vaughan's advice and the advice of Miller and Chevalier, the plan was changed so that it would constitute in good faith a reorganization by vesting not only the Trustees' Certificates control in the hands of the new corporation, but the control of the new corporation in the hands of the Trustees' Certificate holders, and by providing that the Board of Directors of the two banks was to operate and control the new corporation?

A.—I don't remember any such things as that.

175—And that you then signed the document as your lawyers advised you, upon their opinion that that plan, if adopted by you, would constitute in good faith an exchange

E. Leland Taylor—Cross

of one form of security for another form of security representing in substance the same property?

Mr. Crawford: I object to that because there is no evidence in the record to sustain it.

The Court: He is asking him if that isn't what occurred. Objection overruled.

A.—I will answer that I followed the advice of our attorneys; they said "This is the detail of working out the plan the way we agreed."

176—Wasn't this, instead of being a mere sham or a mere technical evasion, in good faith—wasn't this in fact a good faith plan to do exactly what you set forth over your signature in the letter of July 19, 1929?

A.—It was what I said just a while ago.

177—No, I am asking you a different question now, whether this wasn't actually a plan to do in good faith just what you represented in your letter of July 19, 1929 over your signature?

A.—Everything—

Mr. Humphrey (Interrupting): I object. That reminds me of the question "Have you stopped beating your mother-in-law?"

(After argument.)

The Court: Objection overruled.

A.—Everything I have stated was in good faith: everything we did was in good faith; there was never any question of attempting to fool anybody.

178—You intended that there should be a real compliance with the law and did not intend that there should be any pretended compliance, didn't you?

The Court: Objection sustained.

I was one of the men who voted to make this contract with Caldwell. I was for him, I guess I voted for him. It was my understanding that that contract had a year in

E. Leland Taylor—Cross

which we were to evaluate the assets of Caldwell. I did not figure in my mind that the contract was binding until the appraisal was made. If Caldwell and Company's assets proved to be nothing, there was to be no payment and no contract consummated. In other words, the contract was a contract to buy rather than having bought. Caldwell's assets were to be so much, but if it was less, we would pay less, and if it proved to be more, we would pay more. If it were nothing, we would pay nothing.

186—And that evaluation—I am quoting your exact language “It was not in our minds actually a purchase until the terms were consummated.”

A.—My language? I never testified before.

187—Didn't you testify before the Grand Jury?

A.—No, sir,

188—You did not?

A.—I could have made that statement; it is all right with me.

189—Isn't your name E. Leland Taylor?

A.—I don't think I ever testified before the Grand Jury.

190—It is certified to be a correct transcript of E. Leland Taylor's testimony.

A.—I guess I did. That is something I have forgotten.

191—You say it would be your language anyhow?

A.—Yes.

192—It is a correct statement?

A.—I think so.

The appraisal of Caldwell's assets was never made. He had a year, and during that year he was to specify when he was ready to have the appraisal made, and before that year ended, things blew up and it never was made. Some stock was turned over to Caldwell. No dividends were paid on it. I didn't know it was going to be turned over and I was surprised it was.

E. Leland Taylor—Cross

(There was a long argument in chambers concerning a proposed agreed order.)

Mr. Bloomfield: If Your Honor please, in connection with the proposed agreed order, I represent Mrs. Elizabeth Wesch, the widow of G. A. Wesch, one of the defendants. I want to reserve the right to call Mr. White to show that Mr. Wesch never signed that exhibit. He told me that he had no such paper.

The Court: You and Mr. White can examine the records as to what, and if necessary, you can call him to testify, or you can stipulate it.

Mr. Marx: We will protect your rights thoroughly.

The Court: Gentlemen, it has been suggested that the order which we have just recently been discussing in chambers with reference to the elimination of a majority of these defendants as witnesses, lie over until in the morning. In the meantime, Judge Lafon Allen has suggested that he will try to draw up a composite order that will meet with the approval of all parties. Anyway, we will take that up in the morning and see if it cannot be disposed of. I will ask Judge Allen, or any other attorney who wants to do so, to submit orders. Try not to have any more in the order than is necessary.

It has also been suggested that the testimony of defendants who were directors of one or the other of the corporations, and whom it is proposed to call here as witnesses, may also be stipulated. Counsel have suggested that possibly, if the opportunity were given to sort of recount the testimony and take a summary of just what has been done and to determine just what witnesses would be called in the future, this afternoon, we might eliminate the necessity of calling a great many witnesses in that connection, and possibly conclude this case tomorrow. For that reason I think it is important that these attorneys be given

E. Leland Taylor—Cross

the opportunity to make this inquiry and investigation to determine just what can be done towards stipulating what the testimony of future witnesses might be.

Adjourned to meet at nine o'clock A. M., February 3, 1939.

Louisville, Ky., February 3, 1939.

Met pursuant to adjournment with appearances as heretofore.

(After discussion concerning the proposed order to be entered by the Court.)

The Court: The Court's attention has been called to the fact that there are certain defendants who were employees of one or the other of the two institutions, to-wit, the Louisville Trust Company and the National Bank of Kentucky, who are represented by counsel, who because of conditions beyond their control are not present in Court. At the conclusion of this case, should these attorneys later determine that their clients' rights would be better protected by permitting them to testify, before the final judgment of this Court, the case may be reopened for the purpose of receiving that testimony, provided such request is made prior to April 1, 1939. That applies, I might say, to any defendant. We have got to end this case. Those who are here now should produce their clients now, but that will protect those who are not here present now and are relying on the attorneys present to protect their interests.

Now, insofar as Mr. Wickliffe's clients are concerned, I don't think there is any reason at all why that matter could not be determined by stipulation.

Mr. Marx: Whom does he represent?

The Court: I don't know, but regardless of who he represents, it is a matter that can be determined by stipulation as to what the record shows. The Court will require you to do that.

E. Leland Taylor—Cross

I am going to sign this order as of today.

(The Court signed the Order and handed it to the Clerk.
See Vol. I p. 174.)

The Court: Now, Gentlemen, what is next?

Mr. Allen: We furnish a list of names of the men we propose to introduce as witnesses to counsel for plaintiff for the purpose of his seeing how many he can stipulate as to their testimony.

Mr. Marx: I think we could as to these.

The Court: Is that all?

Mr. Crawford: All the witnesses, but we have other things we want to offer. The defendants' request for admissions was filed here, and the answer to it, but it is not marked filed. I would like to have that answer to the defendant's request made a part of the record.

I want to also offer in evidence the transcript of the record in the Court of Appeals of this Court in the case of Laurent vs. Anderson.

(After argument.)

Mr. Crawford: We want to file this with the understanding that another copy will be substituted.

(Said record was marked for identification "Defendant's Exhibit No. 23.")

Mr. Crawford: We also want to file in evidence—

Mr. Marx: This exhibit relates to a defense that has been ruled out.

The Court: He hasn't said anything yet.

Mr. Marx: I mean Laurent vs. Anderson.

(After argument.)

Mr. Marx: All I want to do is to call Your Honor's attention to the fact that this exhibit relates to a defense that we claim has been passed on and ruled out, and therefore we are objecting. Your Honor, I suppose, will pass on it when we argue it?

E. Leland Taylor—Cross

The Court: That is right. Objection overruled; let it be filed.

Mr. Crawford: I also want to file a copy of the Petition and Order filed by Paul C. Keyes as Receiver of the National Bank of Kentucky in the case of Carroll and others vs. The Chemical Bank and Trust Company, and the Banco-Kentucky Company, Jefferson Circuit Court, Chancery Branch, Second Division, No. 205,223. The form of this order has been attested by the Clerk of the Jefferson Circuit Court and the petition has been—

Mr. Marx (Interrupting): There is no question as to the authenticity of it, but it falls in the same classification as our previous objection to Laurent vs. Anderson.

Mr. Crawford: The Order entered therein, I understand Mr. Marx will stipulate, was prepared by his firm for Paul C. Keyes and tendered to the Court; I would like the record to show that.

Mr. Marx: After conference with Mr. Castleman, who was the attorney for the Receiver of the Banco-Kentucky Company.

The Court: All right.

Said copy of said Petition and Order were marked for identification "Defendants' Exhibit No. 24."

Mr. Crawford: Also, the decision of the Circuit Court of Appeals in the case of Laurent vs. Anderson, 70 Fed. (2) 819, I would like that treated as evidence in this case. I understand the Court would take judicial notice of it, but I would like it treated as evidence. Also, there was filed in this Court the order of the Circuit Court of Appeals confirming that case, and without actually filing the Order—

Mr. Marx: I assume the Court would take judicial notice of its own records. There is no objection to it.

E. Leland Taylor—Cross

Mr. Crawford: I also want to file as part of our request for admissions—they were not actually filed therewith—these copies given me by the other side of the published statements of the National Bank of Kentucky, beginning January 11, 1927 to and through October 11, 1930, together with a statement from the Herald-Post as of Monday, June 2, 1930, in reference to the Caldwell deal.

Said exhibits were marked for identification "Defendants' Exhibit No. 25," and "Defendants' Exhibit No. 26."

Mr. Crawford: I would also like to file as part of the evidence the exhibits referred to in our request for admissions—only the ones the plaintiff admitted—that is, the plaintiff admitted they were correct copies.

The Court: Let the objection be noted and overruled.

Mr. Crawford: There are one or two exhibits referred to that are not thereafter attached, and I would like, with Plaintiff's consent, to check them over and add any that are not in the record.

The Court: That is all right; that may be done without an agreement; you may do that on the order of the Court.

Mr. Crawford: If the Court please, I don't recall exactly what the order was on the filing of Keyes vs. Akers, later Atherton vs. Anderson, but I take it, it is in the same form as the ones we have just offered.

The Court: You mean so far as making it a part of this record?

Mr. Crawford: Yes.

The Court: You may check that over.

Mr. Marx: I think it was in the form that the Court might take judicial notice of the record to the extent that either side might refer to it for whatever purposes it might serve.

E. Leland Taylor—Cross

The Court: That record is already in for that purpose.

Mr. Crawford: That record is actually in the case?

The Court: That is right.

Judge Allen: The Order which Your Honor signed this morning concerning what certain defendants would testify to says that it may be read in evidence by the defendants: Is there any mechanical thing we have to do to get it in?

The Court: No; the Court is going to be bound by that Order without having it called to his attention.

Mr. Crawford: I don't know what order Your Honor made on our tendering these pleas of res judicata at the beginning of this trial, or whether they are in the record or not.

(After argument.)

Mr. Marx: They have been marked "Tendered."

(After argument.)

The Court: Let them be filed.

Mr. Marx: I think our objection to that appears in the record——

The Court: Yes, you made your objection to the filing of it and yet would naturally have an exception to the ruling of the Court ordering it filed.

Mr. Marx: The point is that Your Honor previously passed upon the point covered in that plea, and entered an order striking out that plea. I would not want this ruling to be considered as any reversal of that former order.

The Court: Oh, no.

Mr. Crawford: If it is needed to correct the record, we will file a motion for Your Honor to reconsider it.

The Court: The only thing I am trying to do is to get it all in so you can present the whole thing on the final submission. Is there anything else?

Mr. Crawford: We have nothing else so far as I know.

Mr. Marx: We have some evidence.

Frederic M. Sackett

The Court: I think I will hear this rebuttal testimony at this time and then call a recess and you gentlemen may get together on your stipulations and probably dictate it into the record here. Then, we will reconvene to determine whether there is anything to finally wind up.

Mr. Marx: It is not strictly rebuttal testimony because some of this evidence was deferred in order to let them proceed with witnesses going out of town.

(At this point there was a thirty minute recess.)

The following stipulations were agreed upon between counsel for plaintiff and counsel for defendants:

It is stipulated and agreed between the plaintiff and the defendants, Frederic M. Sackett and Olive S. Sackett, that the affidavit of Frederic M. Sackett is hereby read in evidence in his own behalf, and on behalf of Olive S. Sackett as the testimony of Fred M. Sackett. It is further stipulated that the expression in such affidavit "sold and transferred" in reference to Trustees' Participation Certificates means "exchanged" for BancoKentucky stock; that Mr. Sackett did receive the July 19, 1929 letter referred to in such affidavit on or about that date; that such shares of the BancoKentucky Company stock as the said defendants received in exchange or on subscription were received pursuant to the regular deposit form of agreement hereto attached and marked "Plaintiff's Exhibit 186," "Plaintiff's Exhibit 187" and "Plaintiff's Exhibit 188," Exhibit 188 being signed by Fred M. Sackett personally on or about September 16, 1929, and Exhibit 187 being signed by Olive S. Sackett, by W. S. Speed, her attorney, and Exhibit 188 being signed by W. S. Speed as attorney for Fred M. Sackett, the said Speed being duly authorized to sign for the said defendants and that the stock subscribed for was received pursuant to the regular form of subscription hereto attached, marked "Plaintiff's Exhibit 189"

Frederic M. Sackett

which was duly signed by W. S. Speed for F. M. Sackett, pursuant to proper authority as heretofore stated; and neither of the said defendants reported any taxable loss or gain in connection with the exchange of Trustees' Participating Certificates for stock in the BancoKentucky Company; and both of said defendants did report a taxable loss on the sale of their BancoKentucky stock in 1930.

AFFIDAVIT OF FREDERIC M. SACKETT

The affiant, Frederic M. Sackett, being first duly sworn deposes and says as follows, to-wit:

I reside in Louisville, Kentucky, but have been staying in Palm Beach, Florida, since the latter part of November, 1938, on account of my health.

I am unable, due to the condition of my health, to return to Louisville for a resumption of the trial of the above action, and make this affidavit as my testimony in such action.

I am one of the defendants in the above styled action, and am the husband of Mrs. Olive S. Sackett, another defendant, and as Mrs. Sackett's agent, I handled all of her affairs in connection with the National Bank of Kentucky, Louisville, Kentucky, and the BancoKentucky Company.

From 1925 to the beginning of 1930, I maintained a residence in the City of Washington, District of Columbia, at which place most of my time was spent. I returned to Louisville occasionally remaining only temporarily there.

This period covered the time of the organization of the BancoKentucky Company. Being occupied at this distance from my Louisville Office where my bookkeeping facilities were kept, I found it more convenient in the transaction of private business of both my wife and myself in the frequent purchase and sale of securities, that the certificates of stock bought for my wife should be issued in my

Frederic M. Sackett

name as it made for greater ease in transfer. Separate account books were kept in my Louisville office and there wasn't any likelihood of confusion in our accounts from the holding of the certificates in my name. Previous to 1927 both my wife and myself had been for a considerable time the owners of small amounts of the National Bank of Kentucky stock. The certificates of my wife's stock had been in her own name on the Bank's books for many years. It had come to her originally by inheritance as stock of the German Bank a predecessor of the National Bank of Kentucky and had passed through several transfers to the issuance of the new shares of a Ten (\$10.00) Dollar par value in the final reconstruction of the capital structure of the National Bank of Kentucky. These shares together with the purchase of a hundred additional shares of the reduced par value stock, therefore, remained in the name of my wife.

A transcript of the books of account of my wife and of myself showing all the transactions and values from acquisition of the German Bank to the final ownership and sale of Banco Kentucky is as follows:

FROM THE BOOKS OF MRS. OLIVE S. SACKETT

1913—

Mrs. Sackett (Olive S.) received from estate
of J. B. Speed, 61 shares German Bank \$19,825.00

June 1st, 1918—Exchanged above for—

48 $\frac{4}{5}$ shares National Bank of Commerce
(later National Bank of Kentucky) 13,420.00
Bought $\frac{1}{5}$ share 55.00

June 4, 1921—

Bought 50 shares Nat'l Bank of Ky. and
transferred 14 to Mr. Speed at purchase price,
leaving 36 shares, costing 9,026.00

Total 85 shares Nat'l Bank of Ky. \$22,501.00

Frederic M. Sackett

Feb. 2, 1923—		
Transferred to F. M. Sackett 35 shares	9,264.50	
Leaving 50 shares		13,236.50
June 1st, 1927, Stock Dividend 30 shares—		
80 shares		13,236.50
July 1st, 1929—		
80 shares exchanged for 800 shares (participation)		13,236.50
Aug. 30th, 1929—		
Bought 100 same	4,575.00	
Total 900 shares		\$17,811.50
Sept. 19, 1929—		
900 shares exchanged for 1800 Banco-Kentucky		13,811.50
Oct. 2nd, 1929—		
Bot. 1400 new Banco	35,000.00	
" 400 new Banco	10,000.00	
		62,811.50
1930—		
11-25, Sold 420 Banco at $\frac{3}{8}$	\$150.36	
" 780 " at $\frac{1}{2}$	365.04	
" 2400 " at $\frac{1}{2}$	259.20	774.80
Loss		\$62,036.90

FROM THE BOOKS OF FRED M. SACKETT

Feb. 2, 1923—		
Transferred from Olive S. Sackett, 35 shares		
Nat'l Bank of Kentucky	\$ 9,264.50	
June 1, 1927—		
21 shares as Stock Dividend		
Total 56 shares		9,264.50
1929—		
July 1st, 1929, exchanged 56 shares for 560 shares (participation)		9,264.50
Aug. 30, 1929, Bot. 40 shares same	1,830.00	
Total 600 shares		\$11,094.50

Frederic M. Sackett

Sept. 19, 1929—

Exchanged 600 part. shares for 1200 shares

BancoKentucky 11,094.50

October 2, 1929, Bot. 1200 shares BancoKentucky 30,000.00

Total 2400 shares BancoKentucky \$41,094.50

Sold Banco

Nov. 25th, 1930—

280 shares at $\frac{3}{8}$ \$100.24520 " at $\frac{1}{2}$ 243.361600 " at $\frac{1}{2}$ 172.80 516.40

Loss \$40,578.10

The foregoing schedule showing the transactions of both my wife and myself, while an accurate record of the ownership of each of us may differ from the stock records filed in the case at bar as shown by the books of the several corporations. However, the total of our two holdings is the same both on the corporation stock books filed in the case as is set out in the above record of purchase and sale transfers in the Company. The difference between the two records is due to the fact that for the reasons above stated in the purchase of BancoKentucky stock made for cash on October 2, 1929, for Mrs. Sackett's account the certificates for her part were issued in my name as well as my own.

The foregoing account shows that my wife sold and transferred nine hundred (900) shares of the National Bank of Kentucky, valued at \$17,811.50, to the Banco-Kentucky Company on September 19, 1929, and received eighteen hundred (1800) shares of BancoKentucky Company stock therefor; that on October 2, 1929, she bought for cash eighteen hundred (1800) shares of the new Banco-Kentucky Company and paid therefor Forty-five Thousand (\$45,000.00) dollars.

Frederic M. Sackett

The account shows that on September 19, 1929, I sold and transferred to the BancoKentucky Company six hundred (600) shares of the National Bank of Kentucky stock of a value of Eleven thousand ninety-four and 50/100 (\$11,094.50) dollars and received twelve hundred (1200) shares of BancoKentucky Company stock therefor; that on October 2, 1929, I bought for cash twelve hundred (1200) additional shares of BancoKentucky Company stock for Thirty thousand (\$30,000.00) dollars.

Both my wife and myself invested in the new BancoKentucky Company more than two and one-half times as much as the value shown by our books of the National Bank of Kentucky stock, which each of us transferred to the BancoKentucky Company.

These final transactions took place in October, 1929, and I had no knowledge at the time when I exchanged stock and purchased stock for my wife and myself that there was any question as to the solvency of the National Bank of Kentucky. I had always felt that the Bank was exceptionally strong and I certainly would not have purchased the considerable amount of stock which the both of us acquired unless I thoroughly believed that the Bank was solvent.

In exchanging National Bank of Kentucky stock in the BancoKentucky Company I had no idea of attempting to avoid any so-called double liability on the stock of the National Bank of Kentucky. In the first place, as stated, I never considered that there was ever any question of the Bank's solvency. In the second place, I had followed in a general way the facts of the organization of the BancoKentucky Company and knew that it was to have a far larger capital than the Bank and that there were large cash subscriptions to its stock. In the third place, I invested far larger amounts for both my wife and myself in the BancoKentucky stock, in cash, than any possible double

Frederic M. Sackett

liability on the National Bank of Kentucky stock, which we individually held would amount to.

I considered the BancoKentucky Company an entirely distinct, genuine and separate organization from the National Bank of Kentucky. I knew it was organized to do a very different kind of business from that permitted National Banks which was expected to be exceedingly profitable; I knew it was to have and did have stockholders not common to the Bank. While I have before me a copy of the circular of July 19, 1929, setting forth in general the plan for the organization of the BancoKentucky Company providing for a total capital and surplus of Fifty million (\$50,000,000.00) Dollars, and while my attention has been directed particularly to the use of the word "Reorganization" in that circular I do not consider that the formation of this company was in any particular a reorganization of the Bank in spite of the use of the term "Reorganization." The far greater capital, the powers granted to the Company by charter for operations far more extensive in many particulars than the powers of the National Banks under United States Banking Laws, permitted a much wider scope of activity than it is possible for banks themselves to undertake, it clearly indicates the object of organizing a Company to do a kind of business other than strictly banking.

Furthermore, my experience in business brought to my attention and knowledge the many opportunities, that such a Company as the BancoKentucky would have for the use of its capital for making money far in excess of the opportunities of any National Bank, and yet the ownership of large and powerful banks by that Company should bring to it, through its banking subsidiary many opportunities for profitable business.

I recognize that under the United States Banking Laws the opportunities of National Banks to engage in profitable

Frederic M. Sackett

transactions were in many instances curtailed, as for instance the limitations set to the opportunity for branch banking both under Federal laws and in connection with various and sundry State Laws which narrowed the scope in some degree of National Bank activities. I knew that this limitation on branch banking was being overcome to a certain extent through the adoption of what is known as group banking or the outright purchase of stock in other corporations. In this manner the activities of banks both State and National in various localities were brought under a general direction of the larger corporation unit and served as a feeding-ground for that corporation's activities.

The profit opportunities of group banking through the purchase of stock of banks in separated localities by a large company had impressed me as I watched the activities of somewhat similar companies in other communities that had taken place within the previous year or two, such as the Marine Midland Company, Trans-America and others indicating that the financial communities considered the general activity of an organization, such as the Banco-Kentucky Company, a valuable financial development.

My purchase for my wife and myself of Banco-Kentucky stock anteceded by nearly a year the closing of the National Bank of Kentucky. During that period I was unaware of any difficulties facing the National Bank of Kentucky. I considered it a sound bank even up to the day of closing. I did not withdraw deposits from the several accounts in which I was interested and for which I was in a measure largely responsible.

The deposit account of my wife, which I entirely controlled, was on July 21, 1929, \$27,317.25, and on the closing of the Bank in November, 1930, was \$29,573.38.

The Coal Companies in which I am largely interested which kept deposits in checking accounts in the National Bank of Kentucky are:

Frederic M. Sackett

The Pioneer Coal Company deposit account of which on November 1, 1930, was \$11,211.66, and on November 17, 1930, was \$22,707.14.

The North Jellico Coal Company deposit account of which on November 1, 1930, was \$1,322.78, and on November 17, 1930, was \$1,388.40.

The Jellico Coal Company deposit account of which on November 1, 1930, was \$637.83, and on November 17, 1930, was \$637.83.

I cite these figures of the several accounts in which I was interested in the National Bank of Kentucky because although the time of my purchase of stock in the Banco-Kentucky was in early October, 1929, and the disastrous break in the Stock Market in New York occurring from the middle to late October, 1929, following almost immediately after my purchase and developed into a business depression which brought difficulties to many of the corporate interests of the United States, I felt confident even up to the time that the Bank was closed that the National Bank of Kentucky was strong and able to weather the storm. No thought of a stockholders' liability assessment upon the stock of the National Bank of Kentucky ever entered my head. No transfer was made to avoid such a liability nor did I reduce the deposits of the accounts under my control, deposits where any difficulty in the Bank would be first felt and where protection against loss could be most easily effected.

And further affiant sayeth not.

(Signed) FREDERIC M. SACKETT.

COUNTY OF PALM BEACH }
STATE OF FLORIDA } ss.

Before me, Hazel S. Gorham, a notary public in and for said County and State personally appeared FREDERIC M. SACKETT and being first duly sworn stated that the

Frederic M. Sackett

facts set forth in the foregoing affidavit were true to the best of his knowledge and belief.

Subscribed and sworn to before me this 20th day of January, 1939.

(Signed) HAZEL S. GORHAM,
Notary Public.

(SEAL)

Notary Public, State of Florida at Large. My commission expires Nov. 22, 1942.

It is further understood and agreed that the plaintiff objects to the incompetency and immateriality and relevancy of the testimony given by said affidavit to the extent as if the witness were on the witness stand, and particularly to each and every paragraph thereof, which objections are overruled.

It is stipulated by and between the plaintiff and the defendant that the following witnesses, if called to the witness stand on their own behalf, would testify as follows:—

E. J. O'Brien was and is in the leaf tobacco business, and was and is a partner of E. J. O'Brien and Company, which is one of the largest leaf tobacco specialists in the country; that he was at all times shown by the Minute Book a Director of the National Bank of Kentucky, and was a Director of the Louisville Trust Company from the unification of its stock interest with the National Bank of Kentucky, to January, 1930, and was a director of the Banco Kentucky Company from the time of its organization until the receivership thereof; that his stock holdings are listed on the attached "Plaintiff's Exhibit 190," together with the time, manner and cost of acquisition thereof.

It is agreed that as a witness in his own behalf, his testimony on direct and cross-examination would be substantially similar to the testimony heretofore given in this trial by William S. Speed; that the same objections would

E. Leland Taylor—Cross

be made; and it is assumed that the same rulings would be entered thereon; it is stipulated that he agreed to the letter of July 19, 1929, and signed counterparts of both the top and bottom of Plaintiff's Exhibit 24-4.

It is stipulated and agreed between the plaintiff and the defendants that E. Weinstock was in the wholesale hat business and was a Director in the Louisville National Bank & Trust Company, the Louisville Trust Company, and the BancoKentucky Company, as shown by their minute books; and that his official capacity also appears in the minute books.

It is stipulated and agreed between the plaintiff and defendants that Sam H. Stone is a merchandise broker; that he was a Director of the National Bank & Trust Company, the Louisville Trust Company, and the BancoKentucky Company, as shown by the minutes of such institution.

It is stipulated and agreed by the plaintiff and defendants that Ben Metcalfe was with the old Louisville National Bank & Trust Company in 1894 in various capacities and held various offices, to that of Vice-President, and went with the Louisville Trust Company at the time of the merger, being a Director in the old Louisville National Bank & Trust Company, the Louisville Trust Company, and the BancoKentucky Company as shown by the minutes of those institutions.

It is stipulated and agreed by the plaintiff and defendant that the testimony of all three of the above witnesses, namely, Sam Stone, E. Weinstock, and Ben Metcalfe, if called as witnesses on their behalf, on both direct and cross-examination, would be substantially similar to that heretofore given by George O. Boomer and E. Leland Taylor; that the same objections would be interposed, and it is assumed that the same rulings would be entered; that

E. Leland Taylor—Cross

the stock holdings of each of the above named witnesses are listed on the attached exhibits as follows, together, with the time, manner and cost of acquisition, to-wit: Weinstock, Plaintiff's Exhibit No. 191; Stone, Plaintiff's Exhibit No. 192; Metcalfe, Plaintiff's Exhibit No. 193.

It is further stipulated that said three witnesses would also testify that they either agreed to or signed the letter of July 19, 1929, and counterparts of the top and bottom of Plaintiff's Exhibit 24-4.

It is stipulated and agreed by the plaintiff and defendants that Angereau Gray would state that he was with the old Louisville Trust Company from 1891 to its close, and held various offices, including that of Treasurer and Vice-President as shown by the minutes.

It is stipulated and agreed between the plaintiff and defendants that Walter I. Kohn was then President of Herman Straus & Sons Company, and is now engaged in the practice of law.

It is further stipulated and agreed that the testimony of Angereau Gray and Walter I. Kohn, if called as witnesses on their own behalf, on both direct and cross-examination, would be substantially similar to that heretofore given in this case by C. C. Heatt; that the same objections would be interposed, and it is assumed that the rulings entered by the Court would be the same; that the stock holdings of Angereau Gray are listed on the attached Plaintiff's Exhibit No. 194, together with the time, manner and cost of acquisition thereof, and the stock holdings of Walter I. Kohn are set forth in his answer.

It is further stipulated and agreed that said witnesses Angereau Gray and Walter I. Kohn would testify that they signed the letter of July 19, 1929, and counterparts of both the top and bottom of Plaintiff's Exhibit No. 24-4.

Mr. Crawford: I want to offer the Plaintiff's Brief in the case of *Laurent v. Anderson*. That is the Brief of the Receiver.

J. C. Daniels—Direct

Mr. Marx: I never heard of briefs, the argument of lawyers, going into the evidence.

(After argument.)

The Court: It may be marked "Tendered."

Said brief was marked for identification "Tendered"
"Defendant's Exhibit No. 27."

The defendants having rested, the following proceedings were had:

J. C. Daniels,

called for Plaintiff, examined by Mr. Marx, testified as follows:

My name is J. C. Daniels. I live in Louisville. I am assistant to A. M. Anderson, Receiver of the National Bank of Kentucky. I have been an employee of the United States in connection with the liquidation of national banks for fifteen years. I have also been a Receiver in connection with the liquidation of national banks.

I went to work in the liquidation of the National Bank of Kentucky November 19, 1930, and have been continuously engaged therein, in an official capacity ever since. At that time Mr. Keyes was the Receiver. He was succeeded by Mr. Anderson.

I prepared Plf's Ex. No. 195. The first column shows the name of the borrower from the National Bank of Kentucky.

The second column shows the page of the report of May 25, 1929, dated June 15, 1929, on which the loan was mentioned or criticized by the Examiner making the examination. It refers to the pages of the National Banking Examiner's report of the Bank for that period and where the item is mentioned in the report.

I have listed in the next column, headed "On Books May 25, 1929," the amount of debts due from the corporation

J. C. Daniels—Direct

or individual on the books of the National Bank of Kentucky as of May 25, 1929, as shown by the report.

The next column, headed "Previous Charge Offs" shows the amount that was charged off on that individual line previous to the date of this examination.

The next column, headed "Subsequent Charge Offs" and under that "Date" and "Amounts," is the amount of the line that was subsequently charged off before the closing of the National Bank of Kentucky.

The next column, headed "Subsequent Collections," shows the amount that was collected on the line either before the Receivership or afterwards.

The next column, headed "Subsequent Increase in Line," shows the amount the line was increased—additional borrowings after the date of this report, between that time and the closing of the Bank.

The next column shows "Balance Due," on that line on the date I made this schedule up, which was the week before last. It took me approximately a week to make it up.

The last column, headed "Loss," is my opinion of what the loss is or will be in the line eventually.

All of the figures shown here, except the last column, are from the books of the Bank. The last column also shows what the books of the Bank show in all cases where we do not, at present, hold some collateral or collectible value period, or where the actual loss has not been established by Court action.

In cases where we are holding collateral I have determined the value of that collateral. If it was marketable collateral, I used the market at that date. If it was unlisted collateral, I used my best judgment, my opinion of what it was worth. That opinion is based on eight years' experience with that collateral.

The first segregation of items "Liabilities of Corporation in which Directors Are Interested," is a classification in the Bank Examiner's report.

J. C. Daniels—Direct

The listing "Slow and Doubtful Paper and Losses on Loans Listed in Examiner's Report," is the classification in the Bank Examiner's report.

The next classification, "Loans exceeding the limit prescribed by Section 200 of the Revised Statutes, and excessive balances with non-member banks under Section 19, Federal Reserve Act listed in Examiner's Reports," is the Examiners' classification.

The next item, "Real Estate loans listed in Examiner's Report," is the Bank Examiners' classification. "Other loans especially mentioned in Examiner's report closed June 15, 1929," is the Examiner's listing of those items. "Bonds, Securities, etc., listed in Examiner's reports," is the Examiner's classification. In it I have given a description of the bonds in the first column. Then, what they were held at on the books in May, 1929, and subsequently what we realized. In the last column is the loss.

The last item, "Losses on Items Criticized by John S. Wood, Chief National Bank Examiner in Examination of National Bank of Kentucky," is my own summary, not the Examiner's. That is a correct transcript from the books as to all items except the last column, where my own estimate entered into it.

Plaintiff's Exhibit 195 was received in evidence, over defendants' objection, except as to the last two columns with reference to which defendants' objection is sustained. Said last two columns offered by plaintiff as an avowal.

I prepared Ex. 196. It shows loans made on Banco-Kentucky stock. The first column shows the name of the borrower of money loaned for the purchase of Banco stock. The second column shows the amount borrowed and the third column shows payments received on those loans to January 1, 1939. The next column shows the balance due January 1, 1939. The next column, headed "Value," shows what I consider the note to be worth. That is my

Hugh A. White—Direct

appraisal of that item made in the same manner that I appraised the other items. The last column shows the loss. That is my opinion of the loss in that item.

Said Exhibit No. 196 was received in evidence over Defendants' objection, except as to the last three columns, as to which Defendants' objection was sustained.

Plaintiff offered the last three columns as an avowal.

Hugh A. White,

called for Plaintiff, examined by Mr. Marx, testified as follows:

I prepared Ex. 197. It is a comparison of the deposits, on a monthly basis, from February 11, 1927, to November 17, 1930, as shown by the records of the National Bank of Kentucky. It is of the deposits of the National Bank of Kentucky.

The first column shows the date, the second column shows the deposits other than bank deposits, and the third column shows the deposits of other banks with the National Bank of Kentucky.

The last column shows the total of columns two and three, the total deposits in the National Bank of Kentucky on the dates indicated in the first column.

Cross-Examination by Mr. Crawford

On Cross-Examination by Mr. Crawford, with respect to Plaintiff's Exhibit No. 197, Mr. White testified as follows:

I haven't checked these figures from the published statements relating to the Bank's deposits at all. These were made from the daily statement record of the Bank. I don't know whether any of the published statements are on the same date that this schedule is made or not; I didn't check that. The date is shown, February 11th, March 11th, April 11th, September 12th, December 10th. I took it as near the

Hugh A. White—Cross

11th as possible. I took them from the daily statements, which are reproduced in this volume of exhibits, originally. I didn't check daily fluctuation in deposits during the week. I just happened to take the last column from the daily statement book.

I don't know whether in the same month there would be a big difference from one week to another. I didn't check that at all. I tried to be consistent by taking the last column on each page, and that was the 10th or 11th. It was the 11th in each case if that was not a Sunday or a holiday.

Said Exhibit was received in evidence and marked for identification "Plaintiff's Exhibit No. 197," on condition that if defendants wanted to question the witness, after examination of the Exhibit, defendants may recall him for cross-examination.

I prepared Ex. 198. It is a summary showing the percentage of the total outstanding shares of stock of the Banco Kentucky Company, on which dividends were paid, which were held by the same stockholders who exchanged Trustees' Participation Certificates for Banco Kentucky Company stock and were stockholders on November 17, 1930. The first column shows three dates—December 31, 1929, June 30, 1930, and the date of closing, November 17, 1930. The next column is the total shares of Banco Kentucky stock on the date indicated which were outstanding and on which dividends were paid. The next column shows the shares held by former Trustees' Participation Certificate holders who exchanged their Trustees' Participation Certificates for Banco stock, and who held Banco stock at the close. The last column is the computation of the percentage of the total of the outstanding stock of Banco held by those stockholders listed in column 3.

According to the exhibit, the Trustees' Participation Certificate holders who exchanged and still held on Decem-

Hugh A. White—Cross

ber 31, 1929, was 67.01 per cent. The percentage in the same classification on June 30, 1930, was 72.26 per cent. The percentage at the close was 66.68 per cent. They never, at any time, held less than, roughly, two-thirds.

That only includes stockholders who still held Banco-Kentucky Company stock, who had held Trustees' Participation Certificates. Where a Trustees' Participation Certificate holder exchanged his stock and got Banco and held it at any of these dates, December 31, 1929, or June 30, 1930, and then got rid of his stock—that was not included. That would increase it. These were only Trustees' Participation Certificate holders who held Banco and still held Banco at the close.

That percentage would be still larger if I included those Trustees' Participation Certificate holders who acquired their Banco stock by exchange of Trustees' Participation Certificates and sold their Banco stock 15 or 20 days before the close. This is the minimum.

On Cross-Examination by Mr. Crawford, with respect to Plaintiff's Exhibit No. 198, Mr. White testified as follows:

I said I did not include the ones who sold. There were quite a number of those. I don't know the number of shares. The reason I say there was quite a number of them is that in going through the signed agreements for exchange, there are quite a number of signed agreements of people who exchanged who are not now stockholders and were not stockholders at the close. I made no attempt to find out how much that was. In stating the percentage would be increased, I don't know how much. The second column includes not only the amount they transferred, but the amount they bought.

424—How much did they have to buy in order to maintain control of the banks—to have fifty per cent.?

The Court: Control of Banco-Kentucky, you mean?

Hugh A. White—Cross

Mr. Crawford: Yes.

A.—I am sorry, I didn't get that question.

The Court: He means how many more shares would they have to buy between what they actually had and exchanged, and what was a majority of the Banco Kentucky, in order to hold fifty per cent of the stock? How much would they have to purchase over what they already held by reason of having exchanged T. P. C.'s?

425—The whole pertinency is to show that the control remained the same?

A.—Yes, the control of more than two-thirds was always in the hands of these particular individuals.

426—That is the purpose of this statement, and of introducing it?

A.—I prepared the statement of facts in this case—

427 (Interrupting)—Wasn't that the purpose?

A.—I assume it was.

428—You know it was?

A.—I say I assume it was,—I don't think there is any doubt about it.

429—How much stock did these people you are speaking about in the second column have to purchase in order to maintain even a fifty per cent ratio?

A.—I don't understand how I can answer that question from this.

430—You have been over these figures and know what they are?

A.—Sure, I prepared them.

431—Now, how much is included in this second column of purchased stock?

A.—I don't know that.

432—You saw the exhibits filed by Mr. Shuck—you went over them?

A.—I saw them.

Hugh A. White—Cross

433—Did you try to make this so it would not show the amount necessary to be purchased?

A.—I don't say I tried to make it so it would not show; I didn't analyze it from that angle.

• 434—Do you have any figures in front of you—I don't mean in your hands right now, but have you not figures that would show that?

A.—No; I don't have those figures at all.

435—You know how many of the holders you speak of transferred, do you not?

A.—All of these—

436—Can't you take out—

Mr. Marx: Why don't you let him answer?

A.—All shareholders whose holdings are classified in the second column exchanged T. P. C.'s.

437—I understand that.

A. (Continuing)—That includes all their stock at those particular dates, regardless of where they got it.

438—It includes, in addition to the stock they transferred, the stock they bought?

A.—That is what I say.

439—Can't you separate those two items, that which they bought and that which they transferred?

A.—I don't know how I would; I don't have those figures at all.

440—How did Mr. Shuck get them?

A.—He doesn't have it for these dates; he has made an analysis going back to the stock certificates for the final date, but he does not have it for December 31, 1929—at least, he hasn't introduced it here for December 31, 1929.

441—At the formation of Banco, or any other date—you have got three dates here?

A.—I have December 31, 1929, June 20, 1930, and November 17, 1930.

Hugh A. White—Cross

442—All right, on December 31, 1929—you have got it for that date, have you not?

A.—I have the total number of shares held by those particular stockholders as of that date.

443—You understand what I am trying to do?

A.—Yes, but I don't think it can be done from this, or anything I have.

444—I don't mean from this paper, of course, it would be impossible—

A. (Interrupting)—And not from anything I have.

445—Didn't you see the same records that Mr. Shuck has?

A.—No, he has the stock certificates, the cancelled certificates, and has attempted to trace those cancelled certificates right straight through, and see where the stock that is outstanding now—where it came from, tracing it back.

The Court: Did Banco have a stock subscription record?

A.—Yes.

The Court: Is it available?

A.—That is here—pardon me, I should say the record showing payment for stock subscriptions.

The Court: That would be the same thing?

A.—Yes, the thing that was finally paid.

The Court: A person who transferred his T. P. C.'s or his interim receipts for stock in Banco, would that show on that book?

A.—No, not on that book.

The Court: Why wouldn't that book show the actual number of shares that were subscribed, independent of any exchange?

A.—It does.

The Court: Couldn't you take, then, the names from that book of those holders of T. P. C. or interim receipts and ascertain how much stock they actually subscribed for over and above that stock they acquired by exchange?

Hugh A. White—Cross

A.—That can be done.

The Court: Is that what you want?

Mr. Crawford: Yes.

The Court: On December 31, 1929—

A. (Interrupting)—You can't do it for that date.

The Court: Up to that date?

A.—No.

The Court: It shows only who subscribed for the stock.

Mr. Crawford: There is an exhibit here filed by Mr. Shuck, and tendered to them to check which shows that in order to have the amount set out in Mr. White's exhibit that they bought over \$4,000,000 of that stock, which is necessary to have that control, and it was probably not fifty per cent without it.

Mr. Marx: I don't think that can be correct, because at the beginning, as I recall it, there were 570,000 shares of Bank stock exchanged for Banco stock, which makes 1,140,000 shares of Banco that went, at the outset, roughly, to the holders of bank stock, not by purchase, but by exchange, and that is more than fifty per cent—about fifty-one per cent plus of the authorized issue of 2,000,000 shares.

The Court: But they issued more.

Mr. Marx: But they didn't sell any more of that authorized increase of 3,000,000 shares. They never sold any. On the contrary, they bought up 106,000 shares in the open market of what was outstanding.

(After argument.)

The Court: Isn't this same thing in this case once?

Mr. Marx: Not by percentages.

The Court: You are objecting to this exhibit?

Mr. Crawford: I don't care.

The Court: Let it go in without objection.

Said exhibit was received in evidence and marked for identification "Plaintiff's Exhibit No. 198."

*Hugh A. White—Cross.***Continuation of Cross-Examination by Mr. Marx.**

I have checked through the list of persons whom Mr. Wickliffe represented to ascertain whether any of them signed this deposit agreement or made subscriptions to stock. These are the original agreements to exchange Trustees' Participation Certificates for Banco Kentucky stock of Mr. Wickliffe's clients. Every one of Mr. Wickliffe's clients who exchanged stocks signed the agreement to exchange. All of them who subscribed for stock signed the subscription agreement.

Said agreements were received in evidence and marked for identification "Plaintiff's Exhibit No. 199" to "Plaintiff's Exhibit No. 199-19," inclusive, and "Plaintiff's Exhibit No. 200" to "Plaintiff's Exhibit No. 200-15," inclusive.

Federal Reserve Board regulations were received in evidence and marked for identification "Plaintiff's Exhibit 201."

Clip-sheet, Exhibit No. D-58, in the Directors case, dated May 21, 1932, directed by the Court to be produced here by the Clerk from the record in *Anderson v. Akers*, withdrawn from that record and placed in the record in this case.

Said Exhibit marked for identification, "Plaintiff's Exhibit No. 202."

Letter from Mr. Nellis Kraft, dated April 18, 1930, to Mr. James B. Brown, received in evidence over Defendants' objection.

Said Exhibit marked for identification, "Plaintiff's Exhibit No. 203."

It was stipulated between counsel for Plaintiff and counsel for Defendants, that the stock holdings of Mr. W. S. Speed, showing the time, manner and cost of acquisition, be placed in evidence as "Plaintiff's Exhibit No. 204."

Hugh A. White—Cross

A Letter sent by Mr. Bean to Mr. Brown received in evidence, over Defendants' objection, and marked for identification, "Plaintiff's Exhibit No. 205."

Original letter from the office of the Comptroller of the Currency, signed by the Chief National Bank Examiner, to Mr. C. F. Jones, Vice-President of the National Bank of Kentucky, dated May 20, 1930, received in evidence and marked for identification "Plaintiff's Exhibit No. 206," with the understanding that, except as to Brown and Bean, the rest of the defendants would say that they did not know anything about it.

Announcement from the Cincinnati Enquirer of the acquisition of the Brighton and Pearl Market Banks, received in evidence and marked for identification "Plaintiff's Exhibit No. 207," over defendants' objection.

Sample of Louisville National Bank & Trust Company stock certificate received in evidence and marked for identification "Plaintiff's Exhibit No. 208."

Two circulars of the Chicago Stock Exchange announcing the admission of Bancor Kentucky Company stock to listing on that Exchange, received in evidence and marked for identification "Plaintiff's Exhibits Nos. 209 and 210."

Circular letter of Blyth and Company and printed circular, with letter sent to Mr. Jones, the Cashier of the Bank, by Blyth and Company, dated October 7, 1929, relative to this circular, ordered filed in evidence with the stipulation, that it is only competent as to those who actually saw it, and incompetent against any of the others. Said papers marked for identification, "Plaintiff's Exhibits No. 172, No. 172-a, No. 172-b," and "Plaintiff's Exhibit No. 173."

Certified copy of the findings of fact and conclusions of law in Paul H. Deeming vs. B. C. Schram, Receiver of the Guardian National Bank of Commerce of Detroit, and

Hugh A. White—Cross

Alexander J. Groesbeck, Receiver of the Guardian Detroit Union Group, Incorporated, et al., No. 6035 in Equity, in the United States District Court for the Eastern District of Michigan, Southern Division, offered by Plaintiff as an avowal, Defendants' objection thereto having been sustained.

The record in the Metropolitan Holding Company case in the Seventh Circuit Court of Appeals, offered in evidence as an avowal, Defendants' objection thereto having been sustained and marked for identification "Plaintiff's Exhibit No. 211-a."

Mr. Marx: A statement has been furnished to us by Mr. Burkholder's counsel, but this statement is not what we asked for. It was understood that Mr. Burkholder was to obtain, or his counsel was to obtain, from the First National Bank, I think it was, a transcript showing the dates of his deposits during the period in controversy as showing what times he was here and made deposits in Louisville. That has not been furnished.

Mr. Street: Mr. Burkholder was one of my clients and I was primarily responsible for what occurred there. I did not understand, in the first place, that Mr. Burkholder had to obtain a transcript of all deposits during this period of the year. My understanding was that Mr. Burkholder was to determine from records available to him when he was in Louisville beginning about May, 1929 and extending on to the close of the National Bank of Kentucky. This is Mr. Burkholder's statement of what he has been able to determine as to his whereabouts during that period. If Mr. Marx cares to offer it in the record, I would be glad for him to do so.

Mr. Marx: It is our contention that Mr. Burkholder, who stated he was away from here during the entire period covered by the organization of Banco Kentucky—I think

Hugh A. White—Cross

he said he didn't even remotely suspect there was any bank connected with it—was actually here in Louisville during a large portion of that time and made deposits at his bank in his bank account during that time, and since he said he read the newspapers and kept currently advised of what was going on while he was here, that he just must have known the facts, and that he is in error in his recollection as to his absences from town, and as to his failure to remember now what he must have known if he was here.

The Court: Can it not be ascertained if he made deposits at the bank here?

Mr. Marx: Sure, I can get it here by subpoena duces tecum in probably an hour's time or less. I offered to do that a number of times, and each time these gentlemen said it was not necessary, that they would get it.

Mr. Street: If Your Honor will remember, Mr. Burkholder was permitted to testify before the case was closed for the plaintiff because he was going to California. He hurriedly made a search of his records and from that I made up the statement I have here. I might say for Judge Marx' benefit that his bank account during the period—I suppose during August and September that he is worried about—shows that there were transactions in that bank account, but Mr. Burkholder says that does not show he was in Louisville, because checks may have been drawn from elsewhere and deposits made for his benefit; that when he was away from Louisville other people handled transactions for him on that account. If Judge Marx wants to get a transcript from the bank I have no objection, but if he does, I want to explain the fact that, according to Mr. Burkholder, that that would not necessarily show he was in Louisville at that time. This statement, so far as I can see, shows Mr. Burkholder was in Louisville—I want to explain that—I think sufficiently for Judge Marx' purposes.

Hugh A. White—Cross

He returned to Louisville the first of May, 1929 and went to West Baden. He returned to Louisville on May 10th, because of the serious illness of his father who died May 26th. During that time it was his custom to take a trip to Wyoming each Summer with friends, lasting from about August 1st to September. He finds he purchased \$300.00 of traveler's checks in July, but is uncertain whether he took the trip in 1929. He does know he was in Louisville from September, 1929 to March, 1930, and in March, 1930 returned to California and was there the rest of that year.

Mr. Marx: Mr. Burkholder testified that if his bank account showed he made deposits, that he was here, and that that would refresh his recollection. I concede a man may have drawn a check at West Baden and it would go through his bank account, but what I want are the deposits. It seems to us unthinkable that he would not know what everybody in the City of Louisville knew. Counsel has stated that during that period deposits were made—

Mr. Street: I think I said both withdrawals and deposits, during that period of time.

The Court: That is all you want. If he testified he made them himself, he had to be here.

Mr. Marx: During the period covered by the organization of Banco.

The Court: That is right.

Mr. Street: Your Honor, please, according to this Mr. Burkholder was in Louisville from May 10th, certainly until the first of August, and he knew he was in Louisville from September 1929, to March 1930. That leaves a period not definitely accounted for from the first of August, 1929, until about the middle of September, 1929. According to Mr. Burkholder this bank account shows both deposits and withdrawals during that period of time, but that does not definitely establish, in his mind, that he was in Louisville during that period of time.

Hugh A. White—Cross

The Court: That is all you could possibly get from it, if he says he cannot state positively that he made those deposits himself. That would be all you could possibly get and that is all the bank's records would show.

The Court: Anything further?

Mr. Marx: I don't think so, except I am a little bit uncertain as to the language of the stipulation that we now have with reference to Mr. Wickliffe's clients. As far as the certificate, or what they signed, is concerned, we proved then, but now, as far as what they would testify to if called, I am not quite sure as to whether he is willing now to accept the language of the stipulation that other people have accepted, or whether he wants some separate stipulation for himself.

Mr. Wickliffe: I am perfectly willing to stipulate that they will come, so far as their evidence is concerned, under the rule that the Judge laid down.

(After argument.)

Mr. Marx: On the question of how these dividends were paid, it is agreed they were paid by dividend checks of the BancoKentucky Company, of which this is a sample.

Mr. Crawford: Paid by a check of BancoKentucky to its stockholders, of which that is a sample.

Mr. Marx: That is right. I offer this in evidence.

Said Exhibit was offered and received in evidence, marked for identification "Plaintiff's Exhibit No. 212."

This was all the evidence.

At the hearing on June 5, 1940, the following proceedings were had:

Plaintiff's motion, that the Court make and find each and all of the findings of fact and conclusions of law set forth in Findings of Fact and Conclusions of Law requested by plaintiff and filed with the Court January 5, 1940, was overruled. Plaintiff excepted separately to such

Hugh A. White—Cross

ruling with respect to each of said requested findings of fact and conclusions of law.

Plaintiff's motion, that the Court make additional and supplemental findings of fact and conclusions of law in accordance with the opinions handed down May 13, 1938, and March 23, 1940, as set forth in the motion filed June 15, 1940, overruled and plaintiff excepted.

**PROCEEDINGS IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

CAUSE ARGUED AND SUBMITTED

(November 13, 1941—Before: SIMONS, ALLEN
and MARTIN, JJ.)

These causes are argued by Robert S. Marx for A. M. Anderson, Receiver, by W. W. Crawford for Katherine Kirkpatrick Abbott, Administratrix, et al, and by Henry M. Johnson for Susie E. Tellman, et al, and are submitted to the court.

JUDGMENT

(Entered May 4, 1942)

Appeal from the District Court of the United States for the Western District of Kentucky.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Kentucky, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

OPINION

(Filed May 4, 1942)

Before SIMONS, ALLEN and MARTIN, Circuit Judges.

MARTIN, Circuit Judge. This court must again travel the tangled trail of ramifications resultant from the failure of the National Bank of Kentucky.

In an action brought by the receiver of that institution, double liability assessment under 38 Stat. 273, 12 U. S. C. A., 64, was upheld against the receiver of BancoKentucky Company, a Delaware corporation, as the real and beneficial owner of the national bank stock by virtue of its position as holder of participation certificates issued by trustees, who, for the benefit of BancoKentucky Company, held the bare legal title to a vast majority of the shares of the assessed capital stock of the National Bank of Kentucky. *Laurent v. Anderson*, 70 F. (2d) 819.

Only \$90,745.17 of the judgment for \$3,771,464.22 entered in that case was satisfied. In the present action, the receiver of the National Bank of Kentucky seeks to recover from the stockholders of BancoKentucky Company, on the basis of their proportionate stockholdings, the difference, with interest, between the amount of the judgment awarded the national bank receiver against the BancoKentucky Company and the amount collected by him.

After receiving and considering voluminous evidence, which in the printed record on this appeal comprises 212 exhibits contained in five volumes and 913 pages of testimony, a part of which is in condensed form, the district court dismissed the instant action brought by the receiver. The grounds of dismissal appear in the trial court's opinion (32 F. Supp. 328) and in its findings of fact and conclusions of law.

On appeal, the national bank receiver renews his contention that the stockholders of the BancoKentucky Company are shareholders of the National Bank of Kentucky, within the meaning of the federal assessment statutes. He states the essence of his case to be that owners of national bank stock cannot organize a com-

mercantile corporation to hold their bank stock, channel the dividends on the bank stock to themselves through the holding company, and then interpose the corporate entity as a shield against the assessment liability imposed upon "the actual owners of the capital of a national bank, that is, those who have their money invested therein."

The rejoinder of the appellees is that Banco Kentucky Company was an independent corporation and real owner of the doubly-assessed stock of the National Bank of Kentucky, and has been held liable in such capacity; and that the stockholders of Banco Kentucky Company were not shareholders of the National Bank of Kentucky within the meaning of the federal stock assessment statutes.

No useful purpose would be served by repetition of the historical background of this case. On the contrary, it would seem more appropriate not to repeat descriptive narrative which can be found in numerous reported cases in this circuit.

The merger and unification of control and management of the National Bank of Kentucky and the Louisville Trust Company through the issuance of trustees' participation certificates, the terms and conditions upon which the certificates were issued, the organization of Banco Kentucky Company and the underlying purposes thereof, and the acquisition by Banco of the trustees' participation certificates have been described and discussed, not only in the published opinion of the court below (32 F. Supp. 328) and in *Laurent v. Anderson, supra*, but also in *Anderson v. Akers*, 7 F. Supp. 924, 947, et seq. (D. C. Ky.); and, on appeal therefrom, in *Atherton v. Anderson*, 86 F. (2d) 518, 534, et seq. (C. C. A. 6).

Moreover, in litigation instituted by the receiver of the national bank against its officers and directors to impose liability upon them for the bank's losses, this court, in *Atherton v. Anderson, supra*, and in *Atherton v. Anderson*, 99 F. (2d) 883, has described and discussed in detail the operations of the National Bank of Kentucky and the Banco Kentucky Company and the transactions which

Opinion

led to the failure of the national bank, and the subsequent collapse of the BancoKentucky Company. Pertinent factual statement will also be found in the opinion of the Court of Appeals of Kentucky in *BancoKentucky's Receiver v. Louisville Trust Co.'s Receiver*, 263 Ky. 155, which was a successful action to recover statutory double liability, assessed under the laws of Kentucky, against BancoKentucky Company as the beneficial owner of shares of the capital stock of the Louisville Trust Company.

Without undue repetition of what we have said in *Laurent v. Anderson*, *supra*, and the two *Atherton v. Anderson* cases, *supra*, we shall limit discussion of the facts to salient points which appear to direct the way to correct decision.

In the consummation of the plan of unification of the National Bank of Kentucky and the Louisville Trust Company, it was carefully provided that the six trustees holding legal title to the stocks of the two banking institutions should not be personally liable as shareholders, but that each owner of a trustees' participation certificate should be subject to the same liability thereon as if he were owner of record of the proportionate number of bank stock shares held in trust for him. Insofar as attaching liability for double assessment was concerned, the trustees' certificates were the equivalent of bank stock; and holders of such certificates were the real beneficial shareholders of the National Bank of Kentucky.

But, in the certificate of incorporation issued by the state of Delaware to BancoKentucky Company, it was distinctly provided that the private property of the stockholders should not be subject to the payment of corporate debts to any extent whatever, and the shares of that company were described in each stock certificate as "full paid and non-assessable." In the prospectus of the BancoKentucky Company, dated July 19, 1929, mailed to the holders of trustees' participation certificates, it was stated that the new corporation could exercise many profitable and important functions which neither a bank nor a trust company is authorized to exercise,

Opinion

and could take advantage of many sound and profitable financial opportunities frequently presented in the course of business of the two banks but not available to them because of the restrictions upon their power and activities.

It was further pointed out in the prospectus that the broad charter powers of the new corporation would include the right to acquire stocks, bonds, securities, and evidence of indebtedness of other corporations; the power to underwrite securities, to participate in syndicate management and to charge fees and commissions for services in the reorganization or refinancing of other corporations; and the power to issue bonds, to guarantee the obligations of others, and to become surety, guarantor and endorser thereof.

The unification of the National Bank of Kentucky and the Louisville Trust Company was consummated under the trustees' participation certificate plan by an agreement dated April 22, 1927. A week later, market quotations of the National Bank of Kentucky shares of par value of \$100 each were \$470 bid and \$485 asked. Quarterly dividends of four percent were paid regularly on the national bank stock up to the time of the incorporation of the BancoKentucky Company on July 16, 1929; indeed, were so paid up to the closing of the national bank November 17, 1930. None of these dividends was criticized by the Comptroller of the Currency in his letters to the bank, or in the reports of the examiner. On June 14, 1929, a month before BancoKentucky Company was incorporated, the official reports of the National Bank of Kentucky to the Comptroller of the Currency showed a capital of \$4,000,000, a surplus of \$2,000,000, and substantial undivided profits.

No probability of double liability assessment appeared at the time the holders of trustees' participation certificates exchanged the same for shares of BancoKentucky Company. At the time BancoKentucky Company was organized, its directors, who owned 76,115 trustees' participation certificates carrying a maximum statutory assessment liability of \$761,150, exchanged their participation certificates for 152,230 shares of BancoKentucky

Opinion

stock. They subscribed for an additional 47,188 shares of Banco, for which they paid \$1,179,750 in cash. Moreover, of the 2,225 holders of trustees' participation certificates prior to the organization of Banco, 646 of them purchased for \$4,471,950 cash 178,878 shares of Banco Kentucky stock at \$25 per share. This investment in Banco was in addition to their exchange of trustees' participation certificates for stock in Banco. At the time, the trustees' certificates had a market value of "46 bid and 48 asked."

A survey of all the evidence in the case impels the conclusion that the BancoKentucky Company was organized for the purposes declared in its prospectus, and not for the purpose of affording escape by holders of trustees' participation certificates from double liability assessment on bank stock.

Immediately after the closing date for deposit and subscription to BancoKentucky stock, pursuant to the terms of the prospectus, the board of directors, in view of the almost unanimous exchange of trustees' participation certificates for BancoKentucky stock, adopted plans to amend the charter of the latter, so as to increase its capital from two million shares to five million shares; and, in January, 1930, the charter was so amended. Contracts with brokers were authorized for the sale of its shares to the public. On July 1, 1930, Banco stock was held by 6,000 stockholders.

The BancoKentucky Company collected on call and from subscribers to its stock \$25 per share for 394,786 shares, or \$9,869,650 in cash—a wholesome asset. More than half of this amount was furnished by investors who were not holders of trustees' participation certificates.

An excess of \$3,000,000 of the cash realized by Banco from sales of its shares was not invested in bank stocks; but on November 17, 1930, the aggregate par value of bank stocks owned by BancoKentucky Company had reached \$7,770,780. The BancoKentucky Company acquired, during the period between September 25, 1929, and November 22, 1930, either by cash payment or by

Opinion

exchange of its stock, or by both, controlling stock interests in Pearl-Market Bank and Trust Co., Cincinnati, Ohio; Brighton Bank and Trust Co., Cincinnati, Ohio; Central Savings Bank and Trust Company, Covington, Kentucky; Peoples-Liberty Bank and Trust Co., Covington, Kentucky; First National Bank of Paducah, Kentucky; Ashland National Bank, Ashland, Kentucky; Security Bank of Louisville, Kentucky; and the Mechanics Trust and Savings Bank, Paducah, Kentucky.

But it acquired, also, 625 shares of Union Central Life Insurance Company stock; a \$2,000,000 note of James B. Brown, President of the National Bank of Kentucky; a \$588,000 note of Murray Rubber Company of Trenton, N. J., a \$20,000 participation in a note of Louis C. Humphrey; and contracted, on May 28, 1930, for the purchase of 10,000 shares of Caldwell and Company, an expansive investment corporation, in a trade which was not fully consummated.

The deal between Banco and Caldwell and Company was much publicized; and, following the failure of the latter on November 5, 1930, some twelve million dollars was withdrawn from the National Bank of Kentucky by its depositors. The national bank went into the hands of a receiver on November 17, 1930; and, on November 24, 1930, a petition for receivership was filed in a Kentucky state court against the BancoKentucky Company and thereafter a receiver was appointed. On February 20, 1931, the Comptroller of the Currency assessed the stockholders of the National Bank of Kentucky on the full par value of its capital stock of \$4,000,000; and, on March 20, 1931, the receiver of the national bank notified the stockholders of BancoKentucky Company that it was his intention to proceed against them for the collection of the assessment liability represented by trustees' participation certificates held by the BancoKentucky Company to the extent that he should be unable to collect such assessment from the BancoKentucky Company or its receiver.

A few days later, the receiver of the National Bank of Kentucky filed suit in the United States District Court

for the Western District of Kentucky for recovery of more than \$14,000,000 from the bank's directors, on the predicate of their alleged violation of federal statutes and their alleged common law negligence. That civil action has been finally determined by this court in the two *Atherton v. Anderson*, cases, *supra*.

As has been stated, final judgment has been rendered against the receiver of BancoKentucky Company as the real and beneficial owner of the stock of the National Bank of Kentucky involved herein. *Laurent v. Anderson*, *supra*. We are now asked to take the advanced, if not inconsistent, position that the stockholders of the BancoKentucky Company, also, are liable as shareholders of the National Bank of Kentucky, "within the meaning of the federal stock assessment statutes."

The appellant receiver contends that the BancoKentucky Company was intended primarily and functioned exclusively as a holding company for bank stocks, was publicly known as such, and was created to "hold and control banks in the Ohio Valley"; that the stockholders of the national bank were solicited to exchange their bank stock, held in the form of trustees' participation certificates, for stock of the holding company to enable the bank to reorganize and to expand by acquiring a chain of banks; that, throughout the existence of the holding company, substantially all of its income was received from bank-stock dividends, which were channeled to its shareholders; that the dividends received by the national bank stockholders who exchanged their trustees' certificates for shares in Banco were the same in amount as had been received by them prior to the exchange; and that the BancoKentucky Company was "run by and for the bank and bank shareholders."

Appellant points to evidence that the BancoKentucky Company paid no salary or fees to its officers, directors, or employees; maintained no separate offices, and incurred no office expenses; that Banco kept only three books—a journal ledger, a cash and journal book, and a stock securities record, all of which were kept by the cashier of the National Bank of Kentucky. He insists

Opinion

that although the national bank and the holding company were separate corporate entities, their officers and directors interlocked—not entirely, however; and that 94.73 percent of the stockholders of the national bank became stockholders of the holding company. The receiver introduced the evidence of a Certified Public Accountant that, from October 1, 1929, to November 22, 1930, the total income of the Banco Kentucky Company was \$1,307,662.29 and its total expense \$97,413.24, leaving net income in the amount of \$1,210,249.05; that dividends were distributed to its stockholders in the amount of \$1,253,513, which was \$43,263.95 in excess of its net income; and that the money to pay this deficit came from the National Bank of Kentucky and was met by an overdraft on that bank in the sum of \$81,537.15.

Appellant asserts in his brief that the only assets of Banco Kentucky Company, other than bank stocks, “were the few shares of life insurance company stock, the note of its president and the worthless assets taken over from the bank just preceding its collapse at the insistence of the National Bank Examiner.”

Appellant insists that in dismissing the bill of complaint the district court failed to follow *Barbour v. Thomas*, 86 F. (2d) 510, 516 (C. C. A. 6), wherein recognition was accorded the principle that “the actual owners of the capital of a national bank, that is, those who have their money invested therein, are ‘shareholders’ and liable to assessment.”

In the case cited, it appears that the Detroit Bankers Company had been organized as a holding company to acquire the stock of five Detroit banks, including the First National. Stockholders of the respective banks exchanged their bank stock for stock in the holding company. None of the stock of the holding company was sold to the public or issued to any persons other than stockholders of the constituent banks, or their assignees.

The only assets of the holding company upon its organization were the bank stocks transferred to it by constituent units, in exchange for its stock, and \$1,200 received from 120 “trustee shares” of no par value,

Opinion

issued to 12 persons composing a committee which served as agent and attorney for all stockholders who transferred their stock. Such trustee shares were non-participating in dividends, assets, or subscription rights, but were vested with exclusive voting power in the election of directors until the specified date at which they were to be redeemed at cost price, and retired and cancelled. The expenses of the holding company were met by a levy of "service charges" on its various units.

The opinion pointed out that inasmuch as the holding company possessed no substantial assets, except the stock of its component banks, creditors and depositors of the latter were afforded no real protection, either under the federal statute imposing double liability upon shareholders in a national bank, or under a similar statute of Michigan applicable to state banks.

Moreover, by express agreement, the stockholders of the holding company assumed its statutory liability as record holder of the bank stocks and agreed that such liability might "be enforced in the same manner and to the same extent as statutory liability may now or hereafter be enforceable against stockholders of banks or trust companies under the laws under which said banks or trust companies are organized to operate." This provision was printed on the reverse side of the holding company's stock certificate, leading to the court's comment that "there was no hardship on new stockholders or transferees because all were warned by the provision in the certificate." It was observed that the super-added liability imposed by the stockholders upon themselves constituted additional evidence that they regarded themselves as the true and real owners of the bank stocks, and that creditors and depositors should have "that real protection which the law demanded rather than an irresponsible promise; and that this vitally important matter should not be subject to any doubtful interpretation." The point, while deemed worthy of evaluation, was not considered controlling, however, for Judge Hicks said: "But, all this to one side, we are applying a federal statute in a suit by the receiver of a national

Opinion

bank to enforce the personal liability of its real shareholders for the benefits of its creditors and depositors."

The stockholders of the holding company were held to double liability assessment on the shares of stock of the First National Bank.

It would seem that the facts of *Barbour v. Thomas, supra*, are pointedly differentiable from those in the case at bar.

In the former case, the holding company sold no stock to the general public; it was capitalized exclusively by the exchange of its own shares for those of state and national banks, and only bank stocks were acquired; its stockholders expressly assumed double liability assessment on the bank stocks held by it; and the corporation operated strictly within the scope of a typical holding company organized for the acquisition of bank stocks in one community.

In the case at bar, a large portion of its stock was sold by the BancoKentucky Company to the general public, for cash; the company accumulated a cash capitalization of several million dollars, in addition to stocks acquired by exchange of shares; its stockholders expressly assumed no liability for assessment on shares of stock which it owned, its charter provision being that "the private property of stockholders shall not be subject to the payment of corporate debts to any extent whatever"; in addition to its investment in bank stocks, the BancoKentucky Company purchased stock in an insurance company, the heavy obligation of a commercial corporation, the large note of one individual, and the smaller note of another; and an agreement was reached but not consummated to acquire large stockholdings in a non-banking corporation.

In sum total, the BancoKentucky Company conducted operations broader in scope, both territorially and in corporate financing, than did the holding company involved in *Barbour v. Thomas*.

In the opinion in *Atherton v. Anderson*, 86 F. (2d) 518, 536, 537, which was filed on the same date upon which the decision in *Barbour v. Thomas, supra*, was

Opinion

announced, Judge Simons, in reviewing a record which had been incorporated as a part of the record in the instant case, said:

"But Banco was not a mere holding company for the bank's [National Bank of Kentucky's] stock. It was organized for clearly defined purposes, too optimistically conceived, perhaps, but neither illegitimate nor unlawful. It had its own capital with cash resources at one period almost twice the entire capital and surplus of the bank. While in the very beginning the bank stock may, as found by the court, have been its principal asset, and may have continued thereafter to be its most valuable single asset, it had other assets of very substantial value, and it was warrantable inference at the time of its organization and for a substantial period thereafter that it could well meet any assessment that might be levied upon it as a stockholder of the bank. At any rate there is nothing in the record to point to its creation for the purpose of escaping such assessment. Indeed when the assessment was finally made by the Comptroller it was enforced against Banco and not against the stockholders. See *Laurent v. Anderson, supra*. Its separate corporate existence was recognized by the very receiver on whose behalf we are now asked to ignore it. . . .

"The BancoKentucky Company was certainly not a sham, for nearly \$10,000,000 of actual cash paid for its stock attest its reality, and there is nothing in the record to point to it as an instrumentality of the bank. Nor was it organized for a fraudulent purpose or to conceal secret or sinister enterprises conducted for the benefit of the bank."

The additional evidence adduced in the case at bar, though on a different issue, presents no discernible reason for change in the court's previously expressed concept of the character of the BancoKentucky Company.

From our study of the record in this case, we are in accord with the conclusions of the district court that the

Opinion

BancoKentucky Company was not a mere holding company, a sham corporation, or an empty shell; but was a very real and live corporate entity, actively acquiring capital assets; that the corporation was organized for the purposes set out in its prospectus of July 19, 1929, and for no other; that it was conceived in no planned avoidance of double liability assessment upon stock of the National Bank of Kentucky; that the BancoKentucky Company was the true, legal and beneficial owner of the national bank stock; and that its stockholders were not stockholders of the national bank within the meaning of the federal assessment statutes. (38 Stat. 273; 12 U. S. C. A. 64.)

Careful consideration has been given to cases from other jurisdictions which have been cited by the appellant. In none of these decisions has a court traveled the distance which this court is invited to go to hold stockholders in a corporation liable for statutory assessment upon stock held by the corporation in a state or national bank.

In *Nettles v. Rhett*, 94 F. (2d) 42 (C. C. A. 4), the holding company owned no other assets than bank stock, confining its investment to the shares of banks which were being merged into a chain. It appears from the opinion that when the merger was completed the holding company "owned solely the 74,000 shares of the Peoples State Bank stock, which are the subject of this suit, and continued to hold them until the bank closed." The stockholders of the holding company, which was a record stockholder of a single bank, were properly held liable for assessment under a statute of South Carolina providing for double liability assessment upon the stock of insolvent state banks.

Metropolitan Holding Company v. Snyder, 79 F. (2d) 263 (C. C. A. 8), is a far cry from the instant case. There, when a national bank was in shaky condition, its directors organized a holding company to purchase stock in the bank from a stockholder who was unable to make a voluntary contribution under a scheme whereby the bank stock would be re-sold at a profit which was to be

paid to the bank to restore its impaired capital. In these circumstances, the holding company was found to be a mere agency and its individual stockholders were held to be beneficial owners of the bank stock, and liable to assessment as such.

Corker v. Soper, 53 F. (2d) 190 (C. C. A. 5), is even more remote to the situation confronted here. A national bank president organized a corporation, as his mere agent, to hold shares of stock in the bank. In holding him to double liability assessment when the bank failed, the court said that "the law will look through the subterfuge of pretended ownership to fasten liability upon the shareholder to whom, in fact, the shares belong."

In our judgment, *Fors v. Farrell*, 271 Mich. 358, is no more cogent in support of appellant's contention than was our decision in *Barbour v. Thomas*, *supra*. The court said (op. 375): "It all comes to this: That neither an individual nor a corporation can through a trust arrangement or by other indirect means or circumlocution possess as an owner and enjoy the beneficial interest in bank stock without assuming the contingent liability of a stockholder's assessment imposed by law. To hold otherwise would be to nullify the protection given the bank creditors by the statute imposing double liability."

In a later opinion, *Burrows v. Emery*, 285 Mich. 86, the Supreme Court of Michigan said, with respect to its earlier language just quoted, that "this rule is not meant to lend aid to an effort to attack a bona fide corporate entity and hold shareholders of that corporation liable for a bank assessment levied upon bank stock which the corporation owns." *Barbour v. Thomas*, *supra*, was distinguished upon reasoning similar to our own. The Michigan court held that the stockholders of a "Securities Corporation" holding stock in a national bank were not liable for double assessment thereon, where such stockholders had assumed no liability for the assessment, and the holding company "dealt in a wide variety of stocks and bonds pursuant to the terms of its creation," and where "the history of the corporation persuades one to believe that it enjoyed a bona fide

Opinion

existence free from fraudulent intent to evade liability." Judge McAllister, now a member of this court, concurred in the opinion.

BancoKentucky's Receiver v. Louisville Trust Co.'s Receiver, 263 Ky. 155, was an action brought under Kentucky assessment statutes by the receiver of the Louisville Trust Company to recover judgment against BancoKentucky Company for its statutory double liability as a stockholder of the trust company. The Court of Appeals of Kentucky followed *Laurent v. Anderson*, *supra*, and held the BancoKentucky Company liable for the assessment as the real and beneficial stockholder under the Kentucky statute. There is no intimation in the opinion that the highest Kentucky court would carry statutory assessment liability beyond BancoKentucky Company to embrace individual liability of its stockholders.

Certain expressions in *Laurent v. Anderson*, *supra* (823, 824), have direct bearing here and are therefore reiterated: "The stockholder's double liability is not contractual, but is imposed by statute as an incident of ownership. . . . To determine liability under Sec. 64, the courts must disregard the forms of transactions and ascertain who is the real and beneficial holder of the stock. It has long been settled that the real and beneficial holder of bank stock is primarily liable for the double liability. . . . The evidence establishes that Banco was in every sense the true and beneficial owner of the national bank stock involved; the trustees holding only the bare legal title to the stock. . . . The petition and especially the evidence sustain recovery against Banco as the real and beneficial owner under Sec. 64 of the National Banking Act."

The BancoKentucky Company was a legal entity, separate and distinct from its shareholders. The record reveals no underlying purpose of those who organized it or invested in its shares to afford asylum to stockholders of a national bank, seeking escape from the rigidity of individual liability for double assessment. Banco was not a mere sham corporation, nor was it exclusively

Opinion

a holding company. It existed vitally as an independent corporation and not as a mere conduit for the flow of national bank-stock dividends to individuals. The corporation has been held liable as the real and beneficial owner of a large majority of the capital stock of a defunct national bank.

In our judgment, the reach of double liability assessment within the true meaning of the National Banking Act does not extend beyond the Banco Kentucky Company to its stockholders.

The judgment of the district court is affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS

SIXTH CIRCUIT

Nos. 8852, 8853

A. M. ANDERSON, Receiver of the National Bank of
Kentucky,

Appellant,

v.

KATHERINE KIRKPATRICK ABBOTT, Administra-
trix of the Estate of David J. Abbott, deceased, et al.,

Appellees.

PETITION FOR REHEARING

Now comes A. M. Anderson, Receiver of the National Bank of Kentucky, appellant herein, by counsel, and respectfully petitions and moves the Court to grant a rehearing in the above entitled cause in which an opinion was filed May 4, 1942, affirming the judgment and decree of the United States District Court for the Western District of Kentucky, and in support of his petition respectfully submits:

1. The opinion of the court does not touch upon the liability of a large group of defendants who originally held National Bank stock and acquired their Banco stock

by merely exchanging bank stocks (T.P.Cs.) for holding company stock in a non-taxable reorganization of their bank stock holdings and not by sale or other "out and out" transfer.

When the bank closed a majority of the holding company stock was held by original bank shareholders who merely exchanged bank stock (in form of T.P.Cs.) for holding company stock. The holders of the bank stock in the form of T. P. Cs. specifically contracted liability to assessment by a provision incorporated in each of their certificates.

"Article IX, (3). Each owner of a Trustees' Participation Certificate issued hereunder shall be subject to the same liability thereon as he would have been subject to in case he had been the owner of record of such proportionate part of the shares held by the Trustees in any corporation as the number of shares called for by his Trustees' Participation Certificate bears to the whole number of shares covered by all outstanding Trustees' Participation Certificates; . . . The measure of liability assumed hereunder shall be the same as that provided by law with reference to the holders of stock in any particular corporation in which the trustees may hold stock as is provided by law with reference to the holders of such stock, and no more."

Almost coincident with the organization of Banco and the announcement of the bank's "Plan of Reorganization" through the holding company (and as an incident thereto), these participation certificates were split ten for one. The new \$10.00 par certificates again contained the contractual assumption of assessment liability and by accepting them the shareholders again reaffirmed their contract and again recognized themselves as the real owners of the bank stock.

Although the few shareholders who still held T.P.Cs. when the National Bank of Kentucky failed resisted payment of the assessment just as vigorously as the defendants here, they were held liable. In *Laurent v. Anderson*, 70 F. 2d 819, the court said: "Had it been necessary to

* Italics and bold face emphasis throughout this brief are ours, unless the contrary be shown.

recover upon the provision of the contract assuming liability, the decisions of this court would permit such recovery." This language was approved by the Kentucky Court of Appeals in *Banco's Receiver v. Trust Co.'s Receiver*, 263 Ky. 155, 92 S. W. 2d 19, 22. This court recognized a similar contractual liability on the part of the shareholders of Detroit Bankers Company in *Barbour v. Thomas*.

The only transfer of bank stock which releases the shareholder from liability is an "out and out" transfer whereby the shareholder completely severs his stock interest in the bank and completely divests himself of his opportunity of having a voice in its control or the receipt of any of its earnings. In *National Bank v. Case*, 99 U. S. 628, the Supreme Court said:

"It is not every transfer which releases a stockholder from his responsibility as such." Liability continues if the "privileges and possible benefits of ownership continue."

The bank's "Plan of Reorganization" proposed to the bank shareholders (T.P.Cs.) that they merely exchange their T.P.Cs. for holding company stock, on the basis of two holding company shares for each \$10.00 T.P.C. or twenty holding company shares for each \$100.00 T.P.C. This exchange was not a sale but a mere reorganization in so far as this group of original bank shareholders was concerned. ~~The bank stock was to be the principal asset of the holding company and the latter was to be managed and controlled by the bank's officers and directors.~~ The promoters of the holding company designed the plan to trade two shares of holding company stock for one T.P.C. so that it positively should be "*made to appear (so far as the Bank's stockholders are concerned) as a mere receipt of the same property in another form, and not as a closed transaction wherein they part with one species of property in exchange for an entirely different species of property.*"

They decided to make a "reorganization" and to merely change the form of the investment "without in anywise impairing the structure of the setup already agreed upon." * (Ex. 25-5, p. 1157.)

They merely reorganized the mechanics of the control. The trust arrangement was considered a sort of quasi corporation. The exchange of the bank shares (T.P.Cs.) for Banco shares was only a change in the form of the investment. The promoters were careful, "in order to clinch our right, as far as possible, to claim for our stockholders the immunity provided for in" United States Revenue Statutes. (Ex. 25, pp. 1145-46.)

Long after the bank closed the Louisville Trust Company in a pleading filed in court, prepared by capable attorneys, one of whom participated in the defense of this case, and verified by an officer, positively affirmed that the officers

July 9, 1929

* Mr. James B. Brown, President
National Bank of Kentucky
Louisville, Kentucky

Dear Mr. Brown:

IN RE: THE BANCOKENTUCKY COMPANY

Supplementing my former letter to you under date of July 6th, on yesterday I had a conversation with a lawyer, representing the Income Tax Unit at Washington, in the General Counsel's Department, who shortly expects to become a member of the firm of Miller and Chevalier, my office associates in Louisville, which firm, as heretofore explained, specializes in Federal Tax cases, with offices in Washington and New York.

The gentleman gave as his opinion (without opportunity to study the history of the entire transaction) that it was highly important that every preliminary paper, resolution, etc., dealing with this Company and its organization, should clearly recite that the Company is a "reorganization," within the purview of the Revenue Act of 1928.

In other words, the issue and delivery of two shares of stock of the Company, for one Trustees' Participation Share, must be made to appear (so far as the Bank's stockholders are concerned) as a mere receipt of the same property in another form, and not as a closed transaction wherein they part with one species of property in exchange for an entirely different species of property.

I believe we can accomplish this result, without in anywise impairing the structure of the setup already agreed upon, by prefacing the prospectus with some general remarks, as per the enclosed draft herewith submitted for your criticism.

Yours very truly,

(Signed) ROBERT F. VAUGHN.

RFV:IS
1 Encl.

and directors of the Bank and Trust Company and the shareholders decided that it would be to the best interests of the two institutions and their stockholders to accomplish "a more complete and beneficial unification of interests and of the operations of said two institutions," through the "formation of a separate corporation" to acquire a majority of the T. P. Cs. and "that in order to carry out such purpose, the BancoKentucky Company was organized as a holding corporation. . . . That the acquisition by the Louisville Trust Company, as Trustee under the will of Clara H. Bullitt, deceased, of said 580 shares of stock of the BancoKentucky Company was a mere change in form of securities. . . . Such acquisition represented, and was in its essence, a mere continuation and retention of the ownership of said Trustees' Participation Shares." (Ex. 122, pp. 1886, 1887, 1890. See also Ex. 123.)

The Revenue Act of 1928, 26 U. S. C. A. 112b(5),* exempts gains or losses on exchanges of shares, such as the exchange of T.P.Cs. for Banco stock, on a "reorganization." The exemption deals with actualities—the substance of things—not mere forms. "The underlying purpose of the exemptions in § 112 is to disregard corporate manipulations which do not substantially affect the shareholders' interest in the properties." *Helvering v. Schoellkopf*, 100 F. 2d 415, 417. This section was designed to "prevent the taxation of purely fictitious gains." *Speedway Water Co. v. U. S.*, 100 F. 2d 636.

The two important elements exempting such exchanges are the "continuity of interest" and "continuity of control" of the transferor. *Comr. v. Kitselman*, 89 F. 2d 458; 26 U. S. C. A. § 112 (b) (5).

* (5) *Transfer to corporation controlled by transferor.* No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but in the case of an exchange by two or more persons this paragraph shall apply only if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

Had the bank shareholders terminated the continuity of their interest in and control of the National Bank of Kentucky a very substantial liability to income tax would have resulted. One of the attorneys who aided in the organization of the holding company said, *"it will be at once seen that the taxable gain would be very large were it not possible to treat the Banco Kentucky Company as a reorganization under the Revenue Act of 1928."* (Ex. 25, p. 1145.) It is even possible that the trading of bank stock for Banco stock, had it been taxable, would have resulted in a liability exceeding the assessment per share here sought to be recovered.

Persons liable to assessment on bank stock who also assume such liability by express written contract are not relieved from such contractual liability by merely reorganizing the form of their investment. The trading of bank stock for holding company stock simply cannot be a "reorganization," to escape taxes, and a sale, to escape assessment.

As the court said in *Barbour v. Thomas*:

"The stockholders never sold their stock. They simply exchanged it for holding company shares. The holding company certificates represented the interests which the shareholders of each unit held or acquired in the assets of the group. . . . The stockholders of the bank had no intention of retiring from the banking business. They organized the holding company for the protection and promotion of their common interests because they realized that the banks acting separately were at a disadvantage in competing with the Guardian-Detroit Union group. Their primary purpose was to centralize the control and operation of the five unit banks and from time to time acquire control of additional ones by the exchange of holding company stock for other stocks. They were careful to provide that the holding company should be under the exclusive control of officers and agents of the component banks at least until December 21, 1934."

The court should at least hold on rehearing that all defendants who originally owned National Bank stock and who acquired their holding company stock by a mere exchange of T.P.Cs. are liable under their express written contract.

2. The court erred in referring to the decision of *Laurent v. Anderson*, 70 F. 2d 819, as if it was an impediment to the claim asserted against holding company shareholders in this case. The District Court overruled defendant's contention in this respect as did the District Court for the Northern District of Illinois, Eastern Division, in *Anderson v. Atkinson*, 22 F. Supp. 853, and this court has affirmed the trial court's decision. Nevertheless, throughout this court's opinion appears repeated references to the *Laurent* decision and to the fact that Banco was there held to be liable as the real owner of stock of the National Bank of Kentucky. This court says, "We are now asked to take the advanced, if not inconsistent position, that the stockholders of Banco Kentucky Company also are liable as shareholders of the National Bank of Kentucky, 'within the meaning of the Federal stock assessment statutes.'"

There is no inconsistency in so holding! Banco was held liable as the record owner of T.P.Cs. which defendants say "*are admittedly Bank stock for the purpose of this case*." This case then turns on who is the owner of them—Banco or its stockholders." (Appellees' Brief, p. 40.) This Court finds "*insofar as attaching liability for double assessment was concerned, the trustees' certificates were the equivalent of bank stock*." In each reported decision except one, and that decided by a district court in 1893 (*Yardley v. Wilgus*, 56 F. 965), and particularly in the bank stock holding company cases, where the question has been raised, it has been held that national bank receivers may recover assessments both from the record owner, or one liable as a record owner, and from the real owner and particularly both from bank stock holding companies and their stockholders.

This court did not hold in the *Laurent* case that liability stopped with BancoKentucky Company. That issue was not before it. The same answer to that contention should be made here as this court made in answer to defendants' claim in *Barbour v. Thomas*, 86 F. 2d 510, 517. There the holding company stockholders claimed that the decision of the Supreme Court of Michigan, in *Backus v. Connolly*, 268 Mich. 595, that the holding company was the real owner of the stock of the bank, was inconsistent with the receiver's claim that the holding company's stockholders were the real owners of the same bank stock. "The holding company was of course the record owner of the stock of the bank as listed with its president and cashier (U. S. C., Title 12, § 62, 12 U. S. C. A. § 62), but the court did not hold that an assessment under the federal statute was not enforceable against its stockholders as the real or actual owners of the bank's stock. That question was not in issue. . . ."

In *Ullrich v. Thomas*, 86 F. 2d 678, the court again said, "upon this feature it is sufficient to restate our conclusion reached in cases Nos. 7116 and 7117" (*Barbour v. Thomas*) "that the holding company, as between it and the creditors and depositors of the bank, was not the real owner of its stock."

We also call to the court's attention its emphasis in the *Ullrich* case on the importance of the fact that the appellants there "in union with other stockholders of the holding company, received dividends from it" (the bank) "through the holding company."

In this same connection, we believe the court is in error in its interpretation of the decision of the Kentucky Court of Appeals in *BancoKentucky's Receiver v. Louisville Trust Company's Receiver*, 263 Ky. 155, 92 S. W. 2d 19. Because the Kentucky Court of Appeals did not indicate that it would have carried assessment liability beyond BancoKentucky Company to its stockholders, this court

implies that the Kentucky decision supports the decision here. *The question of the liability of the stockholders of the holding company was not before the Kentucky court.* Its decision did not hold the Banco Kentucky Company exclusively liable to assessment any more than the decision of the Supreme Court of Michigan in *Backus v. Connolly*, *supra*. The Kentucky Court of Appeals did attach some importance to the purpose of the Kentucky statute, positively prohibiting Banco from owning more than half of the stock of any banking corporation, to protect creditors and not to enable a bank stockholder to defeat liability. The opinion in the instant case approves a scheme the natural and foreseeable consequence of which was the nullification of the purpose of the National Bank Act to protect creditors.

The holding company was vested with legal title to the T.P.Cs. and thereby subjected itself to the liability of a record owner of National Bank of Kentucky stock, because the Register of the owners of Trust Certificates was, by the terms of the Trust Instrument, kept of record in the bank and showed Banco to be a record owner of T.P.Cs., to-wit, the bank stock. Describing it as the beneficial owner of the bank stock under the trust indenture does not negative the obvious fact that the *ultimate* beneficiaries of the same bank stock were holding company shareholders.

3. The court in its opinion includes as one of the salient points, directing the way to a correct decision, the fact that the T.P.C. holders "carefully provided" that the owner of each of them should be subject to the same liability thereon as if he were a record owner of bank stock, whereas Banco's charter and stock certificates "distinctly" (and deliberately) provided for "non-assessable" share interests. Defendants exchanged their bank stock for T.P.Cs. subsequent to April, 1927. The shareholders then willingly contracted in writing to pay any assessment liability directly and un-

equivocably. While Banco was being organized, the \$100.00 par T.P.Cs. were divided into \$10.00 par T.P.Cs., which again incorporated the express super-added contractual assumption of assessment liability. *The bank's deposits were then shrinking, its borrowing power was substantially exhausted, and examiners were insisting upon the removal of millions of substandard assets.* No one has yet suggested a plausible reason for Banco's promoters' pretended obliviousness to assessment liability in 1929, while they were denominating their share interests as "non-assessable" and when their bank was on the brink of disaster, when the same men were so careful to express their recognition of assessment liability in 1927. However, assessment liability does not turn on intent—on fraud—or on the condition of the bank (except as it may throw light and color on what was done). Shareholders of banks which were sound as Gibraltar up to the day of failure (whose insolvency may have been suddenly precipitated by embezzlement, forgery or catastrophe) are held liable for assessment. The test is—looking through all forms,—Is the person against whom assessment is sought the ultimate beneficiary of bank stock holding?

4. The court refers to the prospectus and Banco's charter as salient points. True, the prospectus referred to many things the new corporation "could" do that which a bank could not do. True, the prospectus pointed out the "broad charter powers" of the holding company, including its "right" to do many things. Neither the prospectus, nor the charter, gave any indication of what the holding company participants proposed that it actually do. The only certain representations in the prospectus were that *the bank and the trust company, and the business conducted by them, should be reorganized by adding Banco which was to be managed and operated by the directors and officers of the two banks.* The plan was expressly conditioned upon

the T.P.C. holders acquiring a majority of the holding company shares and the holding company's acquiring a majority of the T.P.Cs.

We submit the court erred in disregarding the *documentary evidence of Banco's promoters' actual purposes*, the knowledge of all defendants of those *actual purposes*, the absence of any activity on the part of the holding company *except its ownership of bank stock and the receipt and disbursement dividends thereon*.

5. Other salient facts to which the court refers in its opinion are the bank's payment of dividends until it closed November 17, 1930, defendants' claim that none of these dividends were criticized by the Comptroller, and the bank's report to the Comptroller of the Currency before Banco was organized showing a capital of four million dollars, a surplus of two million dollars, and substantial undivided profits. We submit that the only significance of the amount or frequency of dividends paid by the bank, to defendants, is that the original shareholders of the bank who exchanged for Banco still kept getting the dividends on their stock through Banco (which was their own corporate creation). The bank directors declared and paid these dividends to Banco and the same men, as directors of Banco, paid them to the defendants. Would it have made any difference in assessment liability if the Comptroller had urged an increase in the dividends? Obviously not—but the Comptroller's criticism of the management of the bank and its financial condition *from 1927 to the date of its closing could scarcely be considered approval of the way the bank was run*. Of what significance can it be that the bank's books showed a capital surplus in undivided profits of six million dollars just before Banco was organized. Those "books" showed about the same figures the day after it closed. The fact is that the bank was so rotten that after twelve years the assets have only paid depositors seventy cents on the dollar.

6. The court's opinion indicates that it considered the fact that the Banco-Bank directors increased their investment in the enterprise beyond the amount of their assessment liability, that T.P.C. holders likewise increased their investment by buying more holding company stock, as supporting the story of all defendants that they thought they were making a good investment in a company controlling sound banks and that there appeared no probability of an assessment when they traded their bank stock for Banco stock. Our contention is that regardless of the nearness or remoteness of an assessment, *liability* existed by statute on the part of the defendants *before* Banco was organized and that the negation of that liability was an expressed part of the bank's plan of reorganization. A person might not increase his investment in a bank with an assessment appearing probable, but bank stockholders might well be induced to increase their investments in a chain of new banks, by the thought that they could share in the voting control and profits of the enterprise, but have no liability in the event an assessment was ever levied.

The very fact that defendants say they bought holding company stock *because* they thought the bank was in good financial condition is proof that they fully appreciated their position as the beneficial owners of bank stock.

7. We respectfully submit that the court erred in concluding that Banco was organized for the purposes declared in the prospectus and "that it was conceived in no *planned* avoidance of double liability." Banco's purpose to operate and function as a bank stock holding company was not declared in its prospectus, but that purpose appeared in every other medium of reaching shareholders and the public in general. We hardly expect capable and careful lawyers, bankers and bank stockholders to publicly declare that one of the purposes of trading assessable bank stock for *non-assessable* Banco stock was the avoidance of assess-

ment liability. However, it is true that the bank stockholders changed the form of their investment but retained their voting control of the bank and their right to dividends from the bank and provided that the new form of stock holding should be non-assessable. It is also true that some at least of Banco's organizers considered double assessment liability and the *advantage of its avoidance*. The president of the trust company wrote the president of the bank a proposed form letter to be sent to all shareholders, answering questions about the plan which he thought they would naturally raise. Bean proposed to say, "*one of the advantages of transferring your bank stock for Banco-Kentucky Company stock is that you are relieved of the double liability.*" (Ex. 27.) Bean also wrote that he "had serious doubts about" including that statement in the suggested letter. (Ex. 27, p. 1262.) Another officer of the bank solicited the trading of T.P.Cs. for holding company stock, using as an inducement the representation that double liability did not apply to the "new stock." (Ex. 27-1; 37-3.) *The Louisville Trust Company* in a pleading filed in the Kentucky court, explained its exchange of T.P.Cs. held in a representative capacity for Banco stock as merely an exchange in the form of security with the advantage of terminating assessment liability. (Ex. 123, p. 1909.) The same trust company in another verified answer, again represented that Banco-Kentucky was organized as a "holding corporation" empowered to acquire and hold the shares of the stock of the bank and trust company and the stock of other banks and trust companies and corporations; that the exchange of T.P.Cs. for holding company stock did not change the former character of the investment "except that said Banco-Kentucky Company became the beneficial owner of the shares of bank stock and the shares of trust company stock represented by said 290 Trustees' Participation Shares and became subject to the double liability

attaching to both said bank stocks and said trust company's stocks." (Ex. 122, pp. 1887-8.)

8. The court's opinion notes that "immediately" after the closing date for the deposit of T.P.Cs. and subscriptions for Banco stock, the directors adopted plans to increase the company's capital from two million to five million shares and that this was accomplished in January 1930. We assume that this is in connection with defendant's contention that they were surprised at the almost unanimous exchange of T.P.Cs. for holding company stock and that they immediately sought to provide for more Banco stock which could be sold to raise the cash capital the promoters contemplated. At the time the plan was announced enough Banco was set aside for exchange for T.P.Cs. *to cover all outstanding T.P.Cs.* All of Banco stock was pre-empted for the bank shareholders. It was an essential part of the plan that Banco acquire a majority of the T.P.Cs. The bank-trust company officers and directors bent every effort to secure an unanimous exchange.

Of course, the implication in defendants' argument is that Banco's organizers actually expected to provide the holding company with substantial assets other than assessable bank stock. The increased capital was supposed to be made available for the purpose of raising such cash. That this additional cash was not raised is attributed to the stock market crash and the general lack of market for any stock. *The stock market crash was in October, 1929. Banco's capital was not increased until January, 1930, months after Banco's organizers had exhausted the possibility of selling any more of the stock.*

The real purpose of increased capital was explained by Mr. Bean. He wrote, November 4, 1929, that the holding company had enough stock in its treasury to "handle the remaining Cincinnati and Covington deals probably" (bank deals). *"If we trade for many more banks we will have to increase the capital."* (Ex. 134-5, p. 1934.) The Chicago Stock Exchange got out a circular based, of course, upon

information secured from the holding company, advising prospective investors that the additional stock was "to be issued in connection *with the acquisition of additional banks*" to provide cash and for other corporate purposes.

9. The so-called cash subscription for Banco stock, \$9,869,650.00, is characterized in the court's opinion as a "wholesome asset" and it is noted that more than half of that amount was furnished by investors who had not been holders of T.P.Cs. This might have been a wholesome asset in the sense that it might have meant some protection to the depositors of the banks in the event of assessment, had that fund not been dedicated before it was even collected to the purchase of more assessable bank stock. Banco promoters represented to the Chicago Stock Exchange, "It is the intention of the management to employ its cash for acquiring additional banks" (Ex. 74, p. 1723). The Chicago Stock Exchange issued a circular advertising that Banco was organized for "the purpose of owning a controlling interest in state and national banks. . . . The BancoKentucky Company has acquired, through an exchange of stock, nearly 100% of the shares of the National Bank of Kentucky-Louisville Trust Company, and in addition its stockholders have subscribed to 480,000 shares of its stock for cash. *This cash will be used for acquiring majority interests in other banks and for other corporate purposes.*" (Ex. 209, p. 2168.)

Bean wrote Brown before the Banco plan was publicly announced, outlining his understanding of the Banco plan. It was to be suggested to stockholders that they trade their T.P.Cs. for Banco stock and that they could then buy 575,000 shares for \$14,375,000 in cash. "In connection with the idea that our present stockholders put up \$14,375,000.00 in cash, this occurs to me; while the present market value of our stock at \$40.00 is \$23,000,000.00, this stock probably cost them \$15,000,000.00 so we are asking them to double their investment in the bank." (Ex. 28, p. 1265.)

The proof is absolutely clear that no one expected this asset to remain "wholesome" and that everyone intended it to be used as it actually was—in the acquisition of more assessable bank stock. The wholesomeness of the cash, aside from its intended purpose, is further questionable in view of the fact that the bank loaned \$5,300,000.00 and the trust company loaned \$1,710,000.00 to pay for Banco subscriptions. (Ex. 134-5.) The bank lost nearly two million dollars on such loans (Ex. 196), and the cash of the Bank was transferred to the holding company to the tune of seven million dollars.

10. The court notes that, aside from bank stock (having a total par value and equivalent assessment liability, of \$7,770,780.00), over three million dollars of Banco's cash was not invested in bank stocks and that Banco acquired 625 shares of Union Central Life Insurance Company stock, a two million dollar note of President Brown, a \$588,000.00 note of Murray Rubber Company, a \$20,000.00 participation in the Humphries note and contracted for 10,000 shares of Caldwell & Co., "an expansive investment corporation." *The Brown note was an investment by Banco which the other officers and directors claim was unknown and unauthorized. Banco paid \$600,000.00 for the Murray Rubber and Humphries notes, or face value. The transfer of those "assets" from the bank to the holding company was at the insistence of the National Bank Examiner. Both obligations were worthless. That was not an "investment" by Banco but a belated effort to save the sinking bank. [See Banco's Receiver v. National Bank, 281 Ky. 784, 137 S. W. (2d) 357.]** Banco's investment in Union Central Life In-

* The Court of Appeals of Kentucky pointed out that the Murray Rubber and Humphries notes were not investments but were worthless when acquired by Banco. The court further pointed out that the transaction was consummated by the President, acting as dual agent, without disclosing all the facts, and that under those circumstances the transaction could not be sustained. Actually, the only vote to transfer these notes to Banco was a resolution adopted by the Board of the Bank consisting of some of the members of the Board of Banco. Banco's Board never voted on the transaction and those members of Banco's Board who were directors of the Louisville Trust Company were not advised of the transaction until after both institutions closed.

insurance Company stock was described by one defendant as "an infinitesimal amount" (R. 3, p. 167). We submit that, compared with its millions in assessment liability, Banco's assets, consisting of other than bank stock, were nil.

The Caldwell deal, urged by defendants as proof of their intent to get into the securities business, neither substantiates that claim nor did it bring into the holding company's coffers any asset. The transaction was never consummated. It was suggested by Rogers Caldwell, the sole stockholder of "Caldwell & Co., Bankers" who wrote Brown about the feasibility of a consolidation "between the Banco Kentucky Corporation and the banks in which we are interested." (Ex. 103, p. 1840.) One of the purposes of the proposed deal was the affiliation of "the Banco Kentucky Company chain of banks with the Caldwell & Company chain of banks." (R. 3, pp. 166-243.) When Brown announced the contemplated tie-up of the two companies, newspapers published the formation of "Banking Giant" and compared this "banking giant" to other "Bank stock holding companies." (Ex. 26, pp. 1207, 1212.) In fact, defendants' brief shows that Caldwell & Company was not just an investment corporation, but very closely associated with the banking business. The Nashville Clearing House Committee investigated Caldwell and met with the officers of Nashville banks, who were members of the clearing house, and succeeded in having the affairs of that company placed in its hands. (Appellees' Brief, p. 1415.)

We earnestly urge that the court has not realistically considered the undisputed evidence showing that Banco had no independent assets (other than assessable Bank stocks) with which to meet an assessment and was intended primarily to hold bank stocks. The proof of the pudding is the poor eating left for unpaid depositors.

11. The court erred in failing to follow the principles announced in *Barbour v. Thomas*. In discussing the facts of that case, the opinion of the court states that Detroit Bankers Company was organized as a holding company

to acquire the stock of five banks. The Detroit Bankers Company was admitted to be and held to have been a holding company, though its operations were far more extensive in character and amount than those of BancoKentucky Company. The opinion states that none of the Detroit Bankers Company stock was sold to the public or issued to anyone other than "stockholders of the constituent banks or their assignees." What difference does it make that Detroit Bankers Company sold none of its stock to the public? *Many of the defendants in the Barbour case never owned any interest in the First National Bank-Detroit stock until they purchased Detroit Bankers stock on the open market. Detroit Bankers stock was listed and freely bought and sold on the exchanges.* The owners of that holding company stock were held liable because they were the real owners of the bank stock.

The court notes that the only assets of the Detroit Bankers Company "upon its organization" were bank stocks and \$1,200.00 paid for 120 trustees' shares, the holders of which were vested with exclusive voting power in the election of directors, and that the expenses of that holding company were met by service charges against its bank units. However, the Detroit Bankers Company had far more, in the form of assets other than bank stock, when it got under way than BancoKentucky Company ever had. Detroit Bankers Company acquired not only the stock of the banks but owned and operated one of the largest office buildings in the City of Detroit, a safe deposit company, a garage, held the stock of the First Detroit Company (its investment unit), the stock of the First National Company-Detroit, the Detroit Company and the Assets Realization Company (See *Record, Barbour v. Thomas*, Vol. 3, Ex. 97, pp. 1097-1121; Ex. 99-A, p. 1193; Ex. 99-B, p. 1210, Ex. 101-A, p. 1267; Ex. 101-B, p. 1272.) The voting control of Detroit Bankers Company was vested in the twelve trus-

tees. The voting control of the National Bank of Kentucky was vested in the Advisory Committee, consisting of the bank-trust company board, which was also the holding company board, but the Louisville holding company shareholders had the power and right to elect directors of Banco-Kentucky Company. The defendants in this case retained more control over their representatives than those in Detroit did.

The opinion refers to the *Barbour* opinion where it was observed that it was apparent at the outset that the creditors and depositors of the Michigan banks would not be afforded the protection to which they were entitled under Federal and Michigan law, since Detroit Bankers Company possessed no substantial assets except the stock of its component banks (unless holding company stockholders were liable). Of course, that observation concerned the Detroit-Bankers Company at the time of its organization and explained the reason for the shareholders of that Company's expressly assuming assessment liability. In the instant case, it was just as obvious to the organizers of Banco-Kentucky Company that depositors and creditors of their holding company's bank units would have no real protection in the event of assessment. While denying any thought of avoiding assessment liability, and explaining the label "non-assessable" on their shares as the usual form to limit liability, defendants can hardly be heard to say that they unconsciously sought to protect depositors by the contribution of cash capital to the holding company, which was intended to be spent for more bank stocks.

The court refers to the language in the *Barbour* opinion where it is stated that the contract for the assumption of assessment liability appearing on Detroit Bankers Company certificates was a warning to new stockholders or transferees of the nature and extent of their liability which served as additional evidence that they regarded them-

selves as the real owners of the bank stock. The proof shows that the Banco shareholders knew of their investment in the National Bank of Kentucky and in Banco's other banks, they knew their profits came from the business of those banks and they knew that they were the ultimate stockholders whose votes elected persons who ran those banks. The possible hardship on a bank stockholder in complying with a Federal assessment statute is no greater than the "hardship" of complying with other Federal laws to promote the welfare and security of the nation. Plaintiff must concern himself, first, with the hardship on the depositors of the National Bank of Kentucky which will follow from this decision unless a rehearing is granted.

The court further distinguishes *Barbour v. Thomas* by pointing out that Detroit Bankers Company stockholders expressly assumed the double liability, whereas Banco-Kentucky Company shareholders provided expressly that they should not be subject to assessment. This difference is more apparent than real. The Detroit Bankers Company stockholders honestly assumed and provided for liability but denied that liability and the validity of their contract when assessment was levied. Banco stockholders also provided by contract for recognition of assessment liability on the Trust Certificate—then *reorganized* their holdings by exchanging the T.P.C.s for so-called non-assessable shares of Banco. We believe the language of the District Court in *Barbour v. Thomas*, 7 F. Supp. 271, pertinent here:

"In such circumstances, should the corporate entity of the holding company shield the shareholders from the assessment? *If the individuals had incorporated to defeat the assessment, the law would disregard the corporate entity and enforce it without regard to the corporate fiction, or treat the corporation as a mere agency, holding the legal title for the beneficial owners. Corker v. Soper*, 53 F. 2d. 190 (C. C. A. 5). Where individuals incorporate, as here, to preserve and pro-

vide the means of enforcing, the assessment for the security of the bank's creditors, *the corporate entity should not become a shield against such liability, but should be disregarded in law, if necessary, in order that such subterfuge should not succeed in nullifying statutes enacted to safeguard the buying public.*

Generally, the primary purpose of incorporating is to limit the liability of the investors for corporate debts to the stock subscribed. The general principle is against stock liability in the absence of statute. *But this is not a general corporation operating under general rules. The situation is singular, and the principle must be considered in the light of such a situation.*" (7 F. Supp. 271-277.)

As we have noted above, Detroit Bankers Company was far less typical a holding company than BancoKentucky Company. The Detroit holding company had many activities. It owned and controlled companies other than banks. It did have employees. It had operating expenses and it actually had departments manned by non-bank employees which sought to, and perhaps to some extent probably did, simplify and standardize the practices of its unit banks. Detroit Bankers Company certainly was not confined to the acquisition of bank stocks in one community. It owned and controlled stock in banks all over the State of Michigan. Banco had no employees and never contemplated having any employees. It was a name and its headquarters was the desk of the cashier of the National Bank of Kentucky. Banco's assets, other than bank stock, were insignificant compared with such other assets of Detroit Bankers Company. The shares of Union Central Life Insurance Company stock was not a very substantial asset of BancoKentucky Company. *It paid \$25,000.00 for the insurance stock and sold it for \$21,000.00.* The obligation of the Murray Rubber Company and the Louis Humphries notes could hardly be described as "investments" of BancoKentucky

Company. They were known to be worthless when acquired by BancoKentucky Company and they were taken over only to assist the National Bank of Kentucky.

The defendants' explanation of the reason Banco paid \$600,000.00 in cash for worthless National Bank of Kentucky assets is enlightening. Attorney-director-Carroll, who prepared Banco's articles of incorporation, said: "BancoKentucky Company owned all of the capital stock of the National Bank of Kentucky and, therefore, anything that was of benefit to the National Bank of Kentucky would necessarily be beneficial to BancoKentucky" because "ownership was common." Attorney, director and Banco-organizer-Helm said: "after all, the whole thing was one and it all belonged to the same people; it was just taking money out of one pocket and putting it into another, and if the bank owned it and it was questionable, it really did not make any difference. . . . It was just taking money out of one pocket and putting it into another." Director Speed testified that he voted to request Banco to purchase certain worthless assets because: "It was to the advantage of Banco to do it. . . . Banco owned 95% or more of the stock of the bank, that if that was a bad asset they owned 95% of what was bad, and if it was good they owned 95% of what was good."

Three of the defendant witnesses, two of them lawyers who helped organized Banco and one of them counsel for defendants in this case, as members of Banco's Executive Committee had a different view of these "other substantial assets" before the stock assessment was levied. In their petition for appointment of a receiver for the holding company, filed November 24, 1930, they said that prior to the bank's failure Banco "*was in the pursuance of its business the owner and holder of large amounts of the capital stock of the bank-trust company and five other banks which holdings represented substantially all of the prop-*

erty and assets belonging to said defendant (Banco)"; that the failure of the bank and trust company "made it impossible to conduct the affairs of the BancoKentucky Company in the manner and for the purposes for which it was organized," that they had immediately disposed of all Banco's holdings of stock in two Cincinnati banks, two Covington banks and the Ashland bank "for the purpose of enabling those banks to proceed in the operation of their respective positions and to protect their depositors from the results of public excitement"; that they had caused the proceeds of bank stock sales to be placed in the custody of the Receiver of the National Bank of Kentucky and that, in addition to such proceeds "The BancoKentucky Company owns shares of stock in the National Bank of Kentucky and the Louisville Trust Company, which stock constitutes the only assets of said defendant, except the deposit aforesaid held by Paul C. Keyes." (Ex. 66, p. 1676.)

So far as the so-called other substantial assets are concerned, we also call to the court's attention the statement of the Cashier of the bank, the Secretary-Treasurer of the holding company, March 19, 1930, to the Chicago Stock Exchange: "This is to state that the BancoKentucky Company is a holding company for capital stock of banks and trust companies of which it owns a majority of stock, or a controlling interest. *We do not own any stocks outside of bank shares or bonds.*" (Ex. 72, p. 1711.)

Negotiations looking to the creation of another of the "Banking Giant" by tying up BancoKentucky Company and Caldwell & Company was merely one of the several gestures made to bolster waning public confidence. Caldwell stock was absolutely worthless at the time that those negotiations began and it never became an asset of Banco-Kentucky Company.

It is respectfully submitted that the distinction referred to in the opinion between Banco and *Barbour v. Thomas*

are proved by the evidence to be factually without basis and we believe on re-argument we can establish that this court has made a grievous factual mistake and that factually there is no real distinction from *Barbour v. Thomas*.

12. This court, in its opinion, refers to the language in *Atherton v. Anderson*, 86 F. 2d 518, where Judge Simons said that Banco was neither a holding company for just stock of the National Bank of Kentucky, nor organized for unlawful purposes; that it had assets of a very substantial nature and that it could have paid any assessment on the stock of the National Bank of Kentucky for a substantial period after it was organized; that there was nothing in the record to point to its creation for the purpose of escaping assessment; that the Receiver had recognized its separate corporate existence in the *Laurent* case; and that it was not a sham because it had nearly ten million dollars cash.

True Banco was a holding company for the stock of many banks. It might have paid an assessment on National Bank of Kentucky stock had that bank immediately failed after Banco was launched, although even that is doubtful. The other assets Judge Simons referred to were undoubtedly either the ten million dollars or other bank stocks acquired with that money. Whatever may have been in the record in the *Atherton* case, there is certainly proof in this record to point to the fact that in the legal set-up for the organization of this holding company the plan was to deny or negative all assessment liability. Apparently, it was not brought to the attention of the court in the *Atherton* case, that Banco Kentucky Company never legally transacted any business and that its very ownership of T.P.C.s, the acquisition of which was the first essential to the whole plan, was illegal under Kentucky law.

Under Kentucky Statutes, ordinary corporations could be formed for the transaction of any lawful business except

banking (Ky. Stat. 538). Under Kentucky law, *stockholders of investment companies and guaranty companies are subject to double liability* (Ky. Stat. 547). Defendants claim that they intended Banco to be a guaranty company and an investment company. It never was, but had that doubtful intention existed, its organizers knew that the holding company shareholders would be liable to assessment. If the organizers of Banco actually intended that company to engage in the business of making mortgage loans, as they now say they did, they must have known that the corporation would fall within the jurisdiction of the Kentucky Department of Banking (Ky. Stat. 165a-1).

Kentucky laws prohibited any corporation, unless organized under banking statutes, from either "directly or indirectly" engaging in or "carrying on in any way" the business of banking . . ." (Ky. Stat. 567). The very prospectus indicates an intention to reorganize and extend the banking business despite this prohibition. The organizers admitted that another of their unrealized intentions was to use Banco as a little federal reserve system for its unit banks. That certainly is engaging in the banking business, "directly or indirectly."

Under Kentucky laws it was unlawful for a corporation to carry on any business in the state until filing a certain statement and designation of agent with the Secretary of State (Ky. Stat. § 571). **No such statement was ever filed by Banco.** (Ex. 69-A, p. 1692.) **Banco failed to pay a license tax or to file any report with the Kentucky Tax Commission as required by Kentucky law.** (Ky. Stat. 4189-2-3; Ex. 69-B, p. 1694.)

Banco intended to and actually did violate the spirit of the McFadden-Pepper bill (12 U. S. C. A. 36) which prohibited the establishment of branch banks outside of City limits by either State or National bank members of the Federal Reserve System. The National Bank of Kentucky

had one branch in Louisville and the Trust Company had six. (Ex. 79, p. 1780.) Senator Sackett admitted his knowledge of the limitation on the bank's right to establish branches and said when he traded his bank stock for Banco stock that this limitation "was being overcome to a certain extent through the adoption of what is known as group banking. . . ." (R. III, p. 288.)

Long before the unification of the bank with the trust company, Kentucky statutes prohibited any person from "directly or indirectly" holding more than half of the capital stock of any bank or trust company (Ky. Stat. 581, 609). Those laws were designed to "spread the liability" imposed by the ownership of bank and trust company stock "and thus afford greater protection to the creditors." *Banco's Receiver v. Louisville Trust Company Receiver*, 92 S. W. 2d. pp. 19-22. One of the attorney-organizers of Banco wrote "the only plausible excuse we have at the present time for Banco owning such a large per cent of the trustees certificates is that the Bank of Kentucky Company is not 'directly or indirectly' owning more than half of the capital stock of the other institutions, and, furthermore counting upon non-action by the State Banking Commission or Attorney General to enforce this provision." (Ex. 32-2; pp. 1273-4.)

There is certainly proof in this record indicating that Banco was organized for illegal purposes and unlawful purposes in direct violation of applicable State and Federal Statutes.

While the separate corporate existence of Banco need not be disregarded to impose assessment liability, there is ample justification in this record for its being disregarded should that be necessary.

For the foregoing reasons, appellant respectfully prays that a rehearing be granted and that the matters be re-argued before this court.

Respectfully submitted,

NICHOLS, WOOD, MARX & GINTER,
ALFRED KRIEGER,
Attorneys for Appellant.

WILLIAM C. KELLY,
Of Counsel.

CERTIFICATE OF COUNSEL

I, Robert S. Marx, of counsel for the above named appellant, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

ROBERT S. MARX,
Of Counsel for Appellant.

354 :

ORDER DENYING PETITION FOR REHEARING

(Entered June 5, 1942)

The petition for rehearing is denied.

ORDER FOR TRANSMISSION OF EXHIBITS

(Filed August 17, 1942)

On appellant's motion, and it appearing proper, in the opinion of the presiding Judge of this court, that photostatic reproductions of exhibits and the original exhibits should be available for inspection in the Supreme Court of the United States;

IT IS ORDERED that the original exhibits and ten (10) copies of the five (5) volume photostatic reproductions of exhibits be transmitted to the Clerk of the Supreme Court of the United States as part of the record.

**UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

I, J. W. MENZIES, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of record and proceedings in the case of *A. M. Anderson, Receiver of the National Bank of Kentucky v. Katherine Kirkpatrick Abbott, Administratrix of the Estate of David J. Abbott, deceased, et al.*, No. 8852, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 17th day of August, A. D. 1942.

J. W. MENZIES,

*Clerk of the United States Circuit
Court of Appeals for the Sixth Circuit.*

(SEAL)

[fol. 357] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1942

No. —

A. M. ANDERSON, Receiver of the National Bank of
Kentucky, Petitioner,

VS.

KATHERINE KIRKPATRICK ABBOTT, Administratrix of the
Estate of David J. Abbott, Deceased, et al., Respondents

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR A
WRIT OF CERTIORARI

On consideration of the Motion of the Petitioner and his
counsel in the above entitled cause, and good cause therefor
having been shown;

It is Now Hereby Ordered that the time within which
application for a writ of certiorari may be filed herein be,
and the same is hereby, extended until November First,
1942.

Stanley Reed, Associate Justice of the Supreme
Court of the United States.

Dated this 26th day of August, A. D. 1942.

[fol. 358] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1942

No. 497

ORDER ALLOWING CERTIORARI—Filed December 7, 1942

The petition herein for a writ of certiorari to the United
States Circuit Court of Appeals for the Sixth Circuit is
granted.

And it is further ordered that the duly certified copy of
the transcript of the proceedings below which accompanied
the petition shall be treated as though filed in response to
such writ.